

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME and Description of Works, as applicable]*

Early Contractor Involvement HEAD CONTRACT (international)

(ECI HCI-2022)

*[Last amended: 8 June 2023 - PLEASE REMOVE PRIOR TO PUBLICATION OF TENDER DOCUMENTS]*

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FORMAL AGREEMENT

The Contract is made on day of

Parties Commonwealth of Australia (Commonwealth)

The contractor specified in the Contract Particulars (Contractor)

1. The Commonwealth and the Contractor promise to carry out and complete their respective obligations in accordance with the:
   * 1. attached Conditions of Contract; and
     2. other documents referred to in the definition of "Contract" in clause 1.1 of the Conditions of Contract.
2. The parties acknowledge (without limiting any provision of the Contract) that the Contract:
   * 1. provides for the design and delivery of the Works under an ECI delivery model, a key purpose of which is to provide for early involvement of the Contractor in the design, planning, programming and cost planning of the Works and to maximise the achievement of the ECI Objectives;
     2. involves two phase delivery comprising:
        1. an initial contract in the Planning Phase; and
        2. subject to the achievement of Delivery Phase Approval, a new contract for the Delivery Phase;
     3. in the Planning Phase, requires the Contractor to carry out the ECI Activities;
     4. if Delivery Phase Approval is achieved, provides for the parties to proceed to the Delivery Phase during which the Contractor will design (to the extent required by the Contract) and construct, commission, complete and handover the Works in accordance with the Contract;
     5. in consideration of the Contractor undertaking the Contractor's Activities, provides for the Commonwealth to pay the Contractor:
        1. in the Planning Phase, the Planning Phase Price; and
        2. (if applicable) in the Delivery Phase, the Delivery Phase Price; and
     6. if Delivery Phase Approval is not achieved, allows the Commonwealth to proceed to have the Works executed by a third party.
3. This Formal Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.

**SIGNED as an agreement**

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the**Commonwealth of Australia** in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Witness |  |  | Signature of Authorised Officer |
|  |  |  |  |
| Name of Witness in full |  |  | Name of Authorised Officer 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** |

***[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY. INSERT APPROPRIATE EXECUTION CLAUSE FOR A CONTRACTOR INCORPORATED OVERSEAS, NOTING THAT LEGAL ADVICE SHOULD BE OBTAINED IN THESE CIRCUMSTANCES]***

CONDITIONS OF CONTRACT

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

Unless the context otherwise indicates, whenever used in the Contract, each word or phrase in the headings in clause 1.1 has the meaning given to it under the relevant heading.

ACM

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

Act of Prevention

1. Any one of:
   1. a breach of the Contract by the Commonwealth;
   2. any other act or omission of:
      1. the Commonwealth, the Contract Administrator or an Other Contractor engaged by the Commonwealth; or
      2. any personnel (other than any personnel engaged in connection with the carrying out of the Contractor’s Activities), or Other Contractor engaged by the Host Nation, authorised to be on Site by the Host Nation; or
   3. a Variation the subject of a direction by the Contract Administrator, except where the Variation is instructed in the circumstances described in clause 9.9(b),
2. but excluding any act or omission of any person specified in paragraph (b) in accordance with or otherwise permitted by the Contract.
3. **Additional Host Nation Requirements**
4. Means those requirements set out in the Contract Particulars.

**Anti-Corruption Laws**

Means all Statutory Requirements relating to anti-bribery and anti-corruption, including:

* 1. laws in Australia relating to anti-bribery and anti-corruption including the Criminal Code;
  2. laws in the Host Nation relating to anti-bribery and anti-corruption; and
  3. if applicable to the Contractor or any of its officers, employees, subcontractors and agents:
     1. *Foreign Corrupt Practices Act of 1997*, 15 USC § 78dd-1; and
     2. *Bribery Act 2010* (UK).

Approval

1. Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any national, state or local authority, body or other organisation having any jurisdiction in connection with the Site, the Contractor's Activities or the Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:
   1. carry out the Contractor's Activities or the Works; or
   2. occupy, use, maintain or operate the completed Works.

Approved Security

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 Commonwealth.

1. **Asbestos**
2. Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* *2011* (Cth).
3. **Australian Privacy Principle**
4. Has the meaning given in the Privacy Act.

Award Date

1. The date on which the Formal Agreement, to which these Conditions of Contract are attached, has been completed and signed by the Commonwealth and the Contractor.

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 other than by transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange.

Claim

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

Collateral Warranty

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

Commonwealth

1. Commonwealth of Australia as represented by the Australian Department of Defence.

Commonwealth Risk

1. Any one of:
   1. war, invasion, terrorism, 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;
   2. 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
   3. 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.

Completion

1. The point in time when, in respect of the Works or a Stage:
   1. the Works are, or the Stage is, complete except for minor Defects:
      1. which do not prevent the Works or the Stage from being reasonably capable of being used for the intended purpose of the Works or the Stage; and
      2. which can be corrected without prejudicing the convenient occupation, use, operation and maintenance of the Works or the Stage;
   2. those inspections and tests which are required by the Contract to be carried out and passed before the Works or the Stage reach Completion have been carried out and passed;
   3. all documents and other information required for the occupation, use, operation and maintenance of the Works or the Stage (including the Works Information described in Annexure 1 and otherwise described in the Contract) have been submitted to the Contract Administrator in accordance with the Contract; and
   4. without limiting the foregoing, the Contractor has done everything which the Contract requires it to do as a condition precedent to Completion, including those things specified in the Contract Particulars.

Confidential Information

* 1. Means, subject to paragraph (b):
     1. the Contract;
     2. the Project Documents;
     3. any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which is in any way 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 Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, 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 Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf;
     2. is in the public domain otherwise than due to a breach of clause 21; 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 21, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth 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. **Consequential Loss**
3. Means any:
   1. loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of goodwill, loss of use (other than loss of use of the Works or Commonwealth property) or loss of production; or
   2. financing costs,

whether present or future, fixed or unascertained, actual or contingent.

1. **Consolidated Group**
2. A Consolidated Group or MEC (Multiple Entry Consolidated) group as those terms are defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

Construction Risks Insurance

1. A policy of insurance covering the respective rights, interests and liabilities of the Commonwealth, 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 5.1 for which the Contractor bears the risk of loss or damage.

Consultant Deed of Covenant

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

Consultant Design Certificate

1. A consultant design certificate in the form set out in the Schedule of Collateral Documents.

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. for the Planning Phase:
      1. the Formal Agreement;
      2. these Conditions of Contract;
      3. the Contract Particulars;
      4. the Special Conditions;
      5. the ECI Brief; and
      6. the other documents (if any) specified in the Contract Particulars; and
   2. if clause 2.10(b) applies, for the Delivery Phase, a new contract as referred to in clause 2.10(b)(i)B on the terms of:
      1. the documents referred to in paragraph (a) as amended by the Delivery Phase Terms; and
      2. the Works Description.

Contract Administrator

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

Contract Administrator's Office

1. The office provided by the Contractor pursuant to clause 8.26.

Contract Particulars

1. Means:
   1. in the Planning Phase, the particulars annexed to these Conditions of Contract and entitled "Contract Particulars"; and
   2. in the Delivery Phase, the Contract Particulars (Delivery Phase).
2. **Contract Particulars (Delivery Phase)**
3. The particulars referred to in paragraph (a) of the definition of "Delivery Phase Terms".

Contract Price

1. Subject to this Contract, the sum of:
   1. the Planning Phase Price; and
   2. if clause 2.10(b) applies, the Delivery Phase Price.

Contractor

1. The person specified in the Contract Particulars.

Contractor Design Certificate

1. A contractor design certificate in the form set out in the Schedule of Collateral Documents.

Contractor HOTO Obligation

1. Any task, function, requirement or obligation relating to the HOTO Process required to be performed by the Contractor under this Contract or which the HOTO Plan and Checklist allocates, or would reasonably be inferred as allocating, to the Contractor.

Contractor's Activities

1. All things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations.

Contractor's Representative

1. The person specified in the Contract Particulars or any other person from time to time appointed as the Contractor’s Representative in accordance with clause 3.6.

Control

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

Criminal Code

The Criminal Code enacted by the *Criminal Code Act* *1995* (Cth).

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. In respect of the Works or a Stage, the Indicative Date for Completion as adjusted (if at all) in accordance with clause 2.9 and specified in the Contract Particulars (Delivery Phase), as may be adjusted in the Delivery Phase in accordance with the Contract.
2. **Date for Delivery Phase Approval**
3. The date set out in the Contract Particulars, as adjusted (if at all) under clause 2.11(b).

Date of Completion

1. The date of Completion set out in a Notice of Completion.
2. **Date of** **Delivery Phase Approval**
3. The date of a notice issued by the Commonwealth under clause 2.10(a)(i)A.

Deed of Guarantee, Undertaking and Substitution

1. A deed of guarantee, undertaking and substitution in the form set out in the Schedule of Collateral Documents.

Defect

1. Any defect, shrinkage, fault or omission in the Works including any aspect of the Works which is not in accordance with the requirements of the Contract.

Defects Liability Period

1. The period which commences on the Date of Completion of the Works or a Stage and which continues for the period specified in the Contract Particulars, as may be extended by clause 9.11.

Defence

1. The Australian Department of Defence.
2. **Delivery Phase**
3. The period (if any) following the Date of Delivery Phase Approval during which Contractor's Activities are performed.

Delivery Phase Approval

1. Means:
   1. the Design Consultant has finalised the Planning Phase Design Documentation necessary for inclusion in the Works Description under and in accordance with the Design Services Contract;
   2. the Contract Administrator has approved the final:
      1. Delivery Phase Program under clause 2.5(c)(iii); and
      2. cost plan under clause 2.6(d)(iii);
   3. the Delivery Phase Terms have been agreed and executed by the Contractor in accordance with clause 2.9;
   4. all necessary departmental and government approvals to proceed to the Delivery Phase have been obtained from the Australian Government and the Host Nation;
   5. all Planning Phase Milestones have been achieved and the Contractor has otherwise complied with all of its obligations under the Contract to the extent applicable to the Planning Phase, including satisfying all conditions precedent to Delivery Phase Approval specified in the Contract;
   6. the Commonwealth has determined (in its absolute discretion) to proceed with the Contractor from the Planning Phase to the Delivery Phase; and
   7. any additional requirements specified in the Contract Particulars have been met.
2. Delivery Phase Price
3. The Indicative Delivery Phase Price as adjusted (if at all) in accordance with clause 2.9 and specified in the Contract Particulars (Delivery Phase), as may be adjusted in the Delivery Phase in accordance with the Contract.

Delivery Phase Program

The program prepared by the Contractor in accordance with clause 2.5 in respect of the carrying out of the Contractor's Activities during the Delivery Phase as approved by the Contract Administrator under clause 2.5(c)(iii) and updated in accordance with clause 10.2.

1. **Delivery Phase Terms**
2. The formal written agreement between the parties (if any) in respect of the Delivery Phase which:
   1. sets out amended and restated Contract Particulars;
   2. amends the Contract by inserting the Works Description; and
   3. if applicable, amends the other documents forming part of the Contract,
3. for the purposes of the Delivery Phase, such agreement to be substantially in the form set out in the Schedule of Collateral Documents.

**DEQMS**

1. The Defence Estate Quality Management System website available at www.defence.gov.au/estatemanagement.
2. **Design Consultant**
3. The design consultant specified in the Contract Particulars.

Design Documentation

1. Means:
   1. in the Planning Phase, the Planning Phase Design Documentation; and
   2. in the Delivery Phase, all design documentation (including documents, drawings, specifications, reports, models, samples and calculations, equipment technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards) in computer readable and written forms necessary for the Contractor to complete the Works which is not fully designed and documented in the Works Description.
2. **Design Objectives and Principles**

Means, in the Delivery Phase, the design objectives and principles identified in or reasonably to be inferred from the Works Description.

1. **Design Services Contract**

The contract between the Commonwealth and the Design Consultant.

direction

1. Any agreement, approval, authorisation, certificate, consent, decision, demand, determination, direction, explanation,failure to consent, instruction, notice, notification,order, permission, rejection, request or requirement.
2. **ECI**
3. Early contractor involvement.
4. **ECI Activities**
5. That part of the Contractor's Activities which must be performed by the Contractor during the Planning Phase, including, without limitation, those things or tasks more particularly described in the ECI Brief.
6. **ECI Brief**
7. The document specified in the Contract Particulars.

**ECI Objectives**

Means:

* + 1. risk management - the optimal management of all project risks including the identification and implementation of all relevant risk reduction studies;
    2. schedule management - the programming, staging and sequencing of the Works to minimise disruption to operations at or in the vicinity of the Site and enable the Works to achieve Completion within agreed timeframes;
    3. buildability - the design of the Works is fit for the Commonwealth’s intended purposes, maintainable and useable by the Host Nation, free from Defects and otherwise completed to a high standard;
    4. ESD, environmental protection, heritage and biodiversity design input - the design of the Works helps to meet the priorities of the Host Nation by promoting ESD and connectivity, enhancing the capabilities and capacity of the Host Nation by strengthening resilience against natural disasters and providing facilities that are culturally and climatically suitable;
    5. local industry engagement - increases economic benefits for local Host Nation communities by increasing access jobs created by infrastructure investments;
    6. logistics management - the design of the Works considers logistical issues associated with accessing the Site, movements of equipment and personnel to the Site and the operation of the Site following occupation;
    7. value management - the design of the Works ensures that all required scope is delivered so as to maximise value for money;
    8. maintenance and WOL considerations - the design of the Works delivers quality infrastructure that reduces WOL Cost by including provisions for the ongoing maintenance and operation of the asset; and
    9. the other objectives set out in the Contract Particulars.

Employers' Liability Insurance

A policy of insurance covering the liability of the Contractor to its employees at common law for death or injuries arising out of or in connection with their employment, whether as an extension to Workers Compensation Insurance or otherwise.

Environment

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

Environmental Clearance Certificate

1. An Environmental Clearance Certificate issued by the Commonwealth relating to the Contractor's Activities or the Works and any conditions incorporated in that certificate.
2. **Environmental Harm**
3. Any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Incident

1. Any Environmental Harm or Contamination arising out of or in connection with the Contractor's Activities or the Works.

Environmental Management Plan

1. The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from an environmental perspective to:
   1. ensure compliance with Statutory Requirements; and
   2. seek to maximise the achievement of the Environmental Objectives, the ESD Principles and the WOL Objectives.

The Environmental Management Plan must address, at a minimum:

* 1. all Statutory Requirements;
  2. all Environmental Objectives;
  3. without limiting paragraph (d), all ESD Principles and WOL Objectives;
  4. the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's key people under clause 3.6(a)) regarding the Environment;
  5. the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding the Environment during the Contractor's Activities and the Works;
  6. the training and awareness programmes provided to Contractor and subcontractor personnel regarding the Environment;
  7. the procedure for preparing (including tailoring) and finalising the Environmental Management Plan under clause 9.2;
  8. the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Contractor's Activities and the Works, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such identification, control and monitoring; and
     2. complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Works;
  9. the procedure for regularly reviewing, updating and amending the Environmental Management Plan under clause 9.2 (including as a result of any complaint, incident (including Environmental Incidents), near misses and other situations or accidents on Commonwealth property or the Site during the Contractor's Activities and the Works);
  10. the procedure for ensuring subcontractor compliance with the Environmental Management Plan;
  11. the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Environmental Management Plan, including the procedures for recording, reporting, responding to and finalising:
      1. matters arising out of or in connection with such audits or other monitoring; and
      2. complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Works;
  12. the additional matters specified in the Contract Particulars; and
  13. any other matters required by the:
      1. Contract; or
      2. Contract Administrator.

Environmental Objectives

1. The following objectives:
   1. to encourage best practice environmental management through the planning, development, implementation and continuous improvement of environmental management procedures during the Contractor's Activities and the Works;
   2. to prevent and minimise adverse impacts on the Environment;
   3. to recognise and protect any special environmental characteristics of the Site (including cultural heritage significance); and
   4. the additional objectives specified in the Contract Particulars.

Errors and Omissions Insurance

1. A policy of insurance to cover civil liabilities (not covered under Public Liability Insurance, products liability or umbrella liability insurance) whether arising in tort, contract or under statute, incurred by the Contractor or its subcontractors other than in a professional capacity or the capacity of a corporate director or officer, in carrying out the Contractor's Activities.

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 specified in the Contract Particulars.

Executive Negotiators

1. The representatives of the parties specified 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.

Expert Determination Agreement

1. An expert determination agreement on the terms set out in the Schedule of Collateral Documents.
2. **Fee Payment Schedule**
3. The schedule specified in the Contract Particulars, as adjusted from time to time in accordance with clause 12.23, and which sets out:
   1. the instalments in which the Contract Price (or any part of the Contract Price) will be payable; and
   2. if applicable, the milestones which must be achieved for each instalment to become payable (failing which the Contractor's entitlement to be paid the relevant instalment of the Contract Price will not arise until such time as the applicable milestone is achieved).

Financial Representative

1. Means:
   1. in relation to the Contractor, the Contractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Contractor; and
   2. in relation to a subcontractor, the subcontractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the subcontractor.

**Force Majeure**

The occurrence of any of the following exceptional events or circumstances:

* 1. a Commonwealth Risk; and
  2. a natural catastrophe comprising an earthquake, hurricane, cyclone, typhoon, tsunami, volcanic activity, flood, fire, epidemic or pandemic (excluding a Pandemic Adjustment Event),

provided that it is an event or circumstance:

* 1. which is beyond a party's control;
  2. which such party could not reasonably have provided against before entering into the Contract;
  3. which, having arisen, such party could not reasonably have avoided or overcome;
  4. which is not substantially attributable to the other party; and
  5. of which such party did not have, or which a prudent contractor acting reasonably in the circumstances could not have been expected to have, knowledge prior to the submission of the Contractor's tender.

**Fraud**

1. Includes dishonesty (such as obtaining a benefit, or causing loss, by deception or other means).

Fraud and Corruption Control Plan

The plan prepared by the Contractor and finalised under clause 9.2 which must set out in adequate detail the strategy and procedures the Contractor will implement to prevent, monitor, detect, investigate and address instances of known or suspected Fraud or corruption arising in connection with the Contract and the Contractor’s Activities.

The Fraud and Corruption Control Plan must, at a minimum:

* 1. be consistent with the Commonwealth Fraud Control Framework 2017 (as published by the Commonwealth and amended from time to time);
  2. cover all of the Contractor’s Activities, including any being performed by any subcontractor or other person or under any other arrangement established by the Contractor relating to the Contract;
  3. contain appropriate Fraud and corruption prevention, detection, investigation, reporting and audit processes and procedures including in respect of the procurement and payment of subcontractors;
  4. include a summary of Fraud and corruption risks and vulnerabilities associated with the Contract;
  5. propose treatment strategies and controls to manage each identified risk and vulnerability;
  6. provide information about how the Fraud and Corruption Control Plan will be implemented by the Contractor, its subcontractors and its supply chain;
  7. propose strategies to ensure the Contractor meets its obligations set out in the Fraud and Corruption Control Plan;
  8. include mechanisms and timeframes for collecting, analysing and reporting relevant incidents to the Contract Administrator;
  9. include protocols for detecting and handling incidents of known or suspected Fraud or breach of applicable Anti-Corruption Laws;
  10. include mechanisms on how the Contractor will ensure that its officers, employees, agents and subcontractors are made aware of what constitutes Fraud, bribery and corruption, including risks and arrangements for handling incidents relating to the Contract;
  11. outline key roles and responsibilities of all Contractor personnel regarding Fraud and corruption control; and
  12. address any:
      1. other relevant matters to ensure the Contractor complies with its obligations under clause 19 with regards to Fraud, anti-bribery and corruption;
      2. relevant Statutory Requirements, including applicable Anti-Corruption Laws; and
      3. other matters required by the Contract Administrator.

Governmental Requirements

1. Includes all policies, plans, manuals, guidelines, codes of conduct and instructions published by the Commonwealth or the Host Nation which are, or may become, applicable to the Site, the Contractor's Activities or the Works.

GST

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

GST Group

1. 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.

Hazardous Substances

1. Has the meaning in the Special Conditions (if any).

Host Nation

1. The country specified in the Contract Particulars.

HOTO Plan and Checklist

1. The worksheets contained within the excel workbook titled "IPACE HOTO Plan & Checklist" available at DEQMS or such other location notified by the Contract Administrator, as amended from time to time.

HOTO Process

1. The process for handover and takeover of the Works or a Stage to enable the occupation, use, operation and maintenance of the Works or the Stage including the:
   1. commissioning of the Works or the Stage (including the inspection and testing process);
   2. handover of the Works or the Stage to the Commonwealth or such other persons as are nominated in writing by the Contract Administrator (including the Host Nation); and
   3. occupation, use, operation and maintenance of the Works or the Stage by the Commonwealth (or other intended occupants) and Other Contractors,
2. in accordance with the HOTO Plan and Checklist, the documents specified in the Contract Particulars and the other requirements of the Contract.
3. **Indicative Date for Completion**
4. In respect of the Works or a Stage, the relevant date specified in the Contract Particulars.

Indicative Delivery Phase Price

The amount specified in the Contract Particulars.

Infrastructure Directorate Dispensations Process

1. The document of that title available on DEQMS or such other location notified by the Contract Administrator, as amended from time to time.

Information Security Requirements

1. 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 dated 31 July 2020 available at https://www.defence.gov.au/security,

each as amended from time to time.

Insolvency Event

1. Any one of the following:
   1. the Contractor becomes, is declared to be, is taken under any applicable law (including the *Corporations Act 2001* (Cth)) to be, admits to or informs the Commonwealth in writing or its creditors generally that the Contractor is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Contract for financial reasons;
   2. execution is levied against the Contractor by a creditor;
   3. a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Contractor;
   4. where the Contractor is an individual person or a partnership including an individual person, the Contractor:
      1. commits an act of bankruptcy;
      2. has a bankruptcy petition presented against him or her or presents his or her own petition;
      3. is made bankrupt; or
      4. applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
         1. a moratorium of any debts; or
         2. a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,

by which his or her assets are subjected conditionally or unconditionally to the control of a creditor or trustee;

* 1. where the Contractor is a corporation, any one of the following:
     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, restructuring practitioner, administrator, receiver, receiver and manager, provisional liquidator or liquidator (each as defined in section 9 of the *Corporations Act 2001* (Cth)) 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 Commonwealth 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;
  2. the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice; or
  3. anything analogous to anything referred to in paragraphs (a) to (f) or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

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.

IPACE Supplier Code of Conduct

1. The document of that title available on DEQMS or such other location notified by the Contract Administrator, as amended from time to time.

Latent Condition

1. Any physical condition (including underground utility services, contamination or other sub-surface conditions) at the Site orimmediately adjacent to the Site, excluding a ground condition resulting from inclement weather wherever occurring, which differs materially from that which should have been anticipated at the Award Date by a prudent, competent and experienced contractor if it had:
   1. undertaken those site inspections which the Contractor had a reasonable opportunity to undertake; and
   2. examined all documents and other information reasonably available to the Contractor including by the making of reasonable enquiries.

Local Industry Capability Plan

1. The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Contractor will implement to maximise:
   1. the purchase of goods and services from:
      1. Australian suppliers; and
      2. suppliers resident in the Host Nation; and
   2. involvement of the Australian industry and the Host Nation's local industry, including employment of local residents,

in carrying out the Contractor's Activities, including:

* 1. the Contractor's innovative solutions to maximising Australian industry and Host Nation local industry opportunities, involvement and capability and how such innovative solutions will be implemented; and
  2. how the Contractor will maximise:
     1. both direct and indirect benefits to the Australian industry and the local industry of the Host Nation; and
     2. the longer-term impacts on the local industry of the Host Nation, including facilitating capability development, education and training of local residents.

1. **Marine Transit Insurance**
2. A policy of insurance covering all materials, components and things of the Commonwealth, the Contractor and all subcontractors which are intended to be used or incorporated in connection with the Contractor's Activities or the Works, against loss or damage to such property whilst in transit anywhere (including by air, sea or otherwise) until arrival at the Site.

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 Commonwealth 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.

Method of Work Plan for Airfield Activities

1. Has the meaning in the Special Conditions (if any).

Methodology Statement

The document set out at Annexure 3 as amended from time to time in accordance with clause 6.15.

Modern Slavery

Conduct defined as “modern slavery” in the Modern Slavery Act.

Modern Slavery Act

The *Modern Slavery Act* *2018* (Cth).

Modern Slavery Laws

Means:

* 1. any Statutory Requirement of Australia or the Host Nation related to Modern Slavery including the Modern Slavery Act;
  2. Division 270 or 271 of the Criminal Code;
  3. Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27); and
  4. Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

Moral Rights

1. Has the meaning given by the *Copyright Act 1968* (Cth).

Moral Rights Consent

1. A moral rights consent in the form set out in the Schedule of Collateral Documents.

Notice of Completion

1. A notice under clause 13.2(b)(i) by the Contract Administrator stating that Completion of the Works or a Stage has been achieved.

Other Contractor

1. Any contractor, consultant, artist, tradesperson or other person (including the Design Consultant or a facilities management or maintenance contractor) engaged to do work other than the Contractor and its subcontractors.
2. **Outline Cost Plan**
3. The outline cost plan set out in Annexure 4.
4. **Outline Delivery Phase Program**
5. The outline program in respect of the carrying out of the Contractor's Activities during the Delivery Phase referred to in the Contract Particulars.
6. **Pandemic**
7. The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.
8. **Pandemic Adjustment Event**

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

* 1. a change in:
     1. Statutory Requirements (including a change in Host Nation border requirements or Host Nation quarantine requirements);
     2. the availability of local Host Nation labour required for the Works;
     3. the availability or scheduling of international shipping needed for the transport of unfixed goods or materials to the Site; or
     4. the ability to transport unfixed goods or materials stored by the Contractor within the Host Nation to the Site;
  2. 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
  3. 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.

**Pandemic Management Plan**

The plan prepared by the Contractor and finalised under clause 9.2, 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 9.2 (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.

Personal Information

1. Has the meaning given in the Privacy Act.

Planning Phase

The period:

* 1. commencing on the Award Date; and
  2. ending on the earlier of:
     + 1. the Date of Delivery Phase Approval; and
       2. the date on which the Commonwealth gives the Contractor a notice under clause 2.10(a)(ii).

Planning Phase Design Documentation

Means:

* 1. as at the Award Date, the documents described in the Contract Particulars which were produced by the Design Consultant under the Design Services Contract prior to the Award Date; and
  2. all subsequent design documentation which the Design Consultant produces in accordance with the Design Services Contract prior to the expiry of the Planning Phase, and which is provided by the Design Consultant or the Contract Administrator to the Contractor from time to time.

1. **Planning Phase Material Variation**

During the Planning Phase, a change to the ECI Activities which has a material effect on the:

* 1. scope of the ECI Activities; and
  2. resources required for, and the costs of, performing the ECI Activities,

which a prudent, competent and experienced contractor would not have anticipated as at the Award Date.

1. **Planning Phase Milestone**
2. Each milestone for the Planning Phase, as set out in the Contract Particulars.
3. **Planning Phase Milestone Date**
4. In respect of a Planning Phase Milestone, the date for the achievement of that Planning Phase Milestone as set out in the Contract Particulars.
5. **Planning Phase Price**
6. The amount specified in the [[Contract Particulars](#ContractParticulars)](#ContractParticulars) as adjusted, from time to time, by any additions or deductions required to be made under the [[[[Contract](#Contract)](#Contract)](#Contract)](#Contract).
7. **Planning Phase Program**
8. The program in respect of the carrying out of the ECI Activities prepared and updated by the Contractor in accordance with clauses 2.4 and 10.2.

Plant, Equipment and Work

1. Those things used, or work undertaken, by the Contractor to construct the Works but which will not form part of the Works.

Privacy Act

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

Professional Indemnity Insurance

1. A policy of insurance to cover claims made against the insured for:
   1. civil liability for breach of professional duty (whether owed in contract or otherwise); and
   2. unintentional breaches of third party intellectual property,
2. by the Contractor or its subcontractors in carrying out the Contractor's Activities.

Project Documents

Means

* 1. all documents prepared by the Contractor in performing the ECI Activities;
  2. Design Documentation prepared by the Contractor under clause 6.2;
  3. Project Plans;
  4. Approvals;
  5. Methodology Statement;
  6. the documents which the Contractor is obliged to maintain under clause 12.21; and
  7. without limiting paragraphs (a) - (f), any other data, documents, drawings, records, programs and information (including Works Information and information relating to the Contractor’s compliance with the WHS Legislation) and material:
     1. produced; or
     2. provided, or required to be provided, to the Commonwealth or the Contract Administrator,

under, for the purposes of, arising out of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor (including by subcontractors).

Project Lifecycle and HOTO Plan

1. The plan prepared by the Contractor in accordance with, and for the purposes of, the HOTO Process and finalised under clause 9.2, which must:
   1. be prepared in accordance with the HOTO Plan and Checklist;
   2. meet all applicable Statutory Requirements; and
   3. include any other matters required by the:
      1. Contract; or
      2. Contract Administrator.

Project Plans

1. The:
   1. Environmental Management Plan;
   2. Fraud and Corruption Control Plan;
   3. Local Industry Capability Plan;
   4. Pandemic Management Plan;
   5. Project Lifecycle and HOTO Plan;
   6. Site Management Plan;
   7. Work Health and Safety Plan; and
   8. additional plans specified in the Contract Particulars and finalised by the Contractor under clause 9.2(a)(ii),
2. as updated or amended under clause 9.2.

Provisional Sum Work

1. The work or goods so specified in the Contract Particulars for which the sum of money specified in the Contract Particulars is included in the Delivery Phase Price.

Public Liability Insurance

1. A policy of liability insurance covering the:
   1. Contractor and all subcontractors for their respective liabilities; and
   2. Commonwealth for all legal liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Contractor (or any subcontractor),
2. to third parties and to each other, for loss of, loss of use of or damage to property and death of or injury to any person, arising out of or in connection with the Contractor's Activities or the Works.
3. This policy is not required to cover liabilities or losses insured under Construction Risks Insurance, Workers Compensation Insurance, Employers' Liability Insurance, Professional Indemnity Insurance or Errors and Omissions Insurance.

Recipient

1. Any person provided with Confidential Information and, if clause 22 applies, 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.

Related Body Corporate

1. Means a "related body corporate" as defined in section 9 of the *Corporations Act 2001* (Cth) or equivalent entity under any other Statutory Requirement (including a subsidiary or holding company of the Contractor).
2. **Relevant Approval**
3. An approval referred to in paragraph (d) of the definition of "Delivery Phase Approval".

Schedule of Collateral Documents

1. The schedule of proforma contracts and other documents applicable to the Defence ECI Head Contract (International) (ECI HCI-2022):
   1. posted on DEQMS (or any alternative location notified by the Commonwealth), as may be amended by the Commonwealth from time to time; and
   2. which as at the Award Date include the contracts and other documents specified in the Contract Particulars.

Sensitive and Classified Information

1. Means:
   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", "for official use only" or "OFFICIAL: Sensitive";
      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 of Australia (including the Information Security Requirements); and
   2. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) referred to in paragraph (a) above, 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 22, any Separation Arrangements (in respect of Sensitive and Classified Information), 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:
   1. has in place;
   2. will put in place; or
   3. is required to put in place in accordance with a Statutory Requirement or this Contract (including under clause 23.3),
2. for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Strategic Interest Issue or complying with clause 21 and, if clause 22 applies, clause 22.

Shadow Economy Procurement Connected Policy

1. The Australian Government’s “Shadow Economy – Increasing the Integrity of Government Procurement – Procurement Connected Policy Guidelines – March 2019”, as amended from time to time.

Site

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

Site Management Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities and the Works on and near the Site. The Site Management Plan must address, at a minimum:

* 1. all Statutory Requirements;
  2. the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's Representative and the Contractor's key people under clause 3.6(a)) regarding management of the Contractor's Activities and the Works on and near the Site;
  3. the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding the occupation, use, operation and maintenance of Commonwealth property and the Site (including for the purpose of military activities, expeditions and exercises) during the Contractor's Activities and the Works;
  4. procedures for access to:
     1. Commonwealth or Host Nation property; and
     2. the Site,

by Contractor and subcontractor personnel, visitors, pedestrians and vehicles, including procedures for:

* + 1. ensuring security (including identification and pass procedures and any physical security measures);
    2. minimising disruption and inconvenience to the Commonwealth and Other Contractors;
    3. vehicle and traffic management; and
    4. noise management;
  1. without limiting paragraph (d), Site inductions, training and other awareness programmes provided to Contactor and subcontractor personnel in respect of Commonwealth property and the Site;
  2. procedures for:
     1. establishing the Site (including site amenities, laydown areas and parking zones);
     2. cleaning, maintenance, waste management and debris control on Commonwealth property and the Site; and
     3. any dangerous or prohibited substances, material or goods (including Commonwealth property) on the Site relevant to the Contractor's Activities and the Works;
  3. if the Contractor's Activities or the Works are to be carried out on or in the vicinity of an airfield, the procedure for preparation and approval of a Method of Work Plan for Airfield Activities;
  4. the procedure for preparing (including tailoring) and finalising the Site Management Plan under clause 9.2;
  5. the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 9.2 (including as a result of any Site management complaint, incident, near-miss and other situation or accident on Commonwealth property or the Site during the Contractor's Activities and the Works);
  6. the procedure for ensuring subcontractor compliance with the Site Management Plan;
  7. the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on Commonwealth property and the Site associated with the Contractor's Activities and the Works, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such identification, control and monitoring; and
     2. complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Contractor's Activities and the Works;
  8. the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Site Management Plan, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such audits or other monitoring; and
     2. complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Contractor's Activities and the Works;
  9. to the extent that the Contractor's Activities include any demolition, procedures for obtaining approval from the Contract Administrator prior to undertaking such demolition and otherwise complying with any applicable Statutory Requirements (and any relevant Contractor HOTO Obligation) in relation to such demolition;
  10. the additional matters specified in the Contract Particulars; and
  11. any other matters required by the:
      1. Contract; or
      2. Contract Administrator.

Special Conditions

1. The special conditions as set out in Annexure 2.

Stage

1. A stage of the Works specified in the Contract Particulars.

Statement of Tax Record or STR

1. 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 the Environmental Clearance Certificate and any condition or requirement under an Approval);
   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 Commonwealth's international or diplomatic interests or relationships (including with the Host Nation) or national security interests including:
   1. protecting Australia’s national interests, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements);
   2. ensuring that the whole (or any part) of the Sensitive and Classified 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 Department of Defence security clearance, unless the Commonwealth has given its prior written consent (in its absolute discretion); and
   3. ensuringcompliance by the Contractor with Australia’s national security requirements, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements).

Subcontractor Deed of Covenant

A subcontractor deed of covenant in the form set out in the Schedule of Collateral Documents.

Subcontractor Design Certificate

A subcontractor design certificate in the form set out in the Schedule of Collateral Documents.

Table of Variation Rates and Prices

1. The table specified in the Contract Particulars, containing rates and prices to be used for the purposes of valuing Variations under clause 11.3.
2. **Tax** or **Taxes**
3. 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. Unless otherwise stated in the Contract, means:
   1. during the Planning Phase, a Planning Phase Material Variation; and
   2. during the Delivery Phase, any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

WHS Legislation

1. Means the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations* *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 Commonwealth 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, decommissioning, remediation and disposal costs (including waste disposal) and occupying, using, operating and maintaining the Works after Completion.

WOL Objectives

1. Means balancing the:
   1. WOL Cost;
   2. useful life of the Works;
   3. reliability and availability of the Works throughout their useful life;
   4. operability and maintainability of the Works throughout their useful life;
   5. value for money achieved by the Commonwealth from the design, construction, use, occupation, operation and maintenance of the Works;
   6. opportunity to reduce resource use during the occupation, use, operation and maintenance of the Works throughout their useful life; and
   7. achievement of the additional matters specified in the Contract Particulars.

Work Health and Safety Plan

1. The plan prepared by the Contractor and finalised under clause 9.2 (which is either Contract specific or Site specific) and which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation).
2. The Work Health and Safety Plan must address, at a minimum:
   1. the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Contractor's Activities and the Works;
   2. so far as it is reasonably practicable for the Contractor to do so, the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the Contractor's Activities and the Works are being undertaken regarding consulting, cooperating and coordinating activities in relation to the compliance with the duties contained in the WHS Legislation, as if the WHS Legislation applied to the Contractor;
   3. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures to the Commonwealth, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Contract Administrator with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
   4. any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
   5. the procedures and strategies for maximising the capability development, education and training of local Host Nation residents in the context of work health and safety, including in respect of the provision of first aid and emergency life support training at the workplace;
   6. the proposed risk assessment process that will be implemented to ensure the provision of adequate first aid and emergency life support personnel and associated first aid equipment at the Site;
   7. the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
   8. the arrangements for ensuring that work health and safety is a compulsory agenda item at Site meetings and/or monthly project meetings and ensuring that the outcomes of those agenda items are communicated to the Contract Administrator;
   9. if design forms part of the Contractor's Activities, proposed design risk assessments, purchasing policies for substances, Plant, Equipment and Work, the process for meeting Statutory Requirements regarding design (as if the WHS Legislation applied to the Contractor) and the process for addressing design changes relevant to work health and safety considerations;
   10. the management of work health and safety generally, including any relevant work health and safety policy, details of any relevant 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 and information-sharing to the Contract Administrator pursuant to clause 8.17 and dispute resolution on work health and safety matters;
   11. the procedures the Contractor will adopt to verify its and its subcontractors compliance with its Work Health and Safety Plan, including details of the regularity, form and content of such verification activities;
   12. the provision of written assurances to the Contract Administrator under clause 8.17(f);
   13. emergency evacuation arrangements for all personnel including as a result of injury, Force Majeure or similar circumstance;
   14. the management of subcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation;
   15. address the Contractor's communications strategy for consulting, co-operating and co-ordinating matters concerning work health and safety, including:
       1. communicating Site hazards and risks and work health and safety issues to the Commonwealth, Other Contractors and subcontractors; and
       2. information sharing between the Contractor, the Commonwealth, Other Contractors and subcontractors in respect of Site hazards and risks and work health and safety issues;
   16. any additional matters specified in the Contract Particulars; and
   17. any other matters required by the:
       1. Contract; or
       2. Contract Administrator.

Workers Compensation Insurance

1. A policy of insurance prescribed by Statutory Requirements in each State and Territory or international jurisdiction in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside, to insure against or make provision for the liability of the Contractor to its employees for death or injuries arising out of or in connection with their employment.

Works

1. The physical works, a brief description of which is set out in the Contract Particulars, which the Contractor must design (to the extent required by the Contract), construct, commission, complete and handover to the Commonwealth (or other occupants) in accordance with the Contract.

Works Description

1. The document or documents described as such and set out in the Delivery Phase Terms.
2. **Works Information**
3. Information and data created in connection with and relating to the design and construction of the Works or a Stage or otherwise relating to each element of the Works or a Stage and the Site upon which they are constructed, including the requirements set out in Annexure 1 and clause 25.1(c).
   1. Interpretation

In the 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 1.1, headings are for convenience only and do not affect the interpretation of the Contract;
    4. references to any party to the Contract include its successors or permitted assigns;
    5. a reference to a party, clause, Annexure, Attachment, Schedule, or exhibit is a reference to a party, clause, Annexure, Attachment, Schedule or exhibit of or to the Contract;
    6. references to the Contract and any deed, agreement or instrument are deemed to include references to the 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 except where otherwise specified in the Contract;
    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 12.5),

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 10.8, 10.9 and 10.10:
       1. any extension of time stated in days; or
       2. any reference to "day",

will exclude public holidays and include only those days which are stated in the Contractor's then current program under clause 10.2 as working days;

* + 1. references to "business days" are to days other than:
       1. a Saturday or Sunday;
       2. a public holiday in the Host Nation; or
       3. any other day specified in the Contract Particulars;
    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. the word "subcontractor" will include subcontractors, suppliers and consultants and the word "subcontract" will include a contract with a subcontractor;
    5. where a clause contains two options, the option specified in the Contract Particulars will apply;
    6. derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1;
    7. unless agreed or notified in writing by the Contract Administrator or the date of the standard or reference document is specified in the Works Description, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Works Description is a reference to the edition last published prior to the submission of the relevant Design Documentation.

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 Works Description and Design Documentation available to the Contract Administrator;

* + 1. for the purposes of clauses 7.4(a)(ii), 7.5(c)(ii), 8.4(c)(ii), 8.22(d)(ii), 8.30(d)(i)B, 9.5, 10.2(c)(ii) and 10.16(e)(ii), a reference to “extra costs” includes a reference to extra costs reasonably incurred by the Contractor as a direct result of the applicable event delaying the Contractor; and
    2. requirements contained in the ECI Brief and the Works Description (as the case may be), whether or not they include the expression "the Contractor must" or any equivalent expression, will be deemed to be requirements to be satisfied by the Contractor, unless stated otherwise.
  1. Miscellaneous
     1. The Contract (including clause 15) is subject to and is to be construed in accordance with the laws of the State or Territory of Australia specified 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. The 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 the 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. The Contractor must indemnify the Commonwealth against any liability to or claim by a third party including a subcontractor or Other Contractor caused by any breach by the Contractor of a term of the Contract.
     7. All obligations to indemnify under the Contract survive termination of the Contract on any basis.

1. Engagement and ECI Activities
   1. Engagement

The Contractor must:

* + 1. immediately commence to carry out the Contractor's Activities in accordance with the Contract; and
    2. unless otherwise stated, carry out the Contractor's Activities at its cost.
  1. Contractor’s Obligations During the Planning Phase

The Contractor must, in the Planning Phase:

* + 1. perform the ECI Activities:
       1. under and in accordance with:
          1. this clause 2 and the ECI Brief;
          2. the other requirements of the Contract; and
          3. any directions of the Contract Administrator;
       2. in an open and transparent manner;
       3. with the degree of care, skill and diligence that would be reasonably expected from a prudent, competent and experienced contractor engaged to perform activities similar to the ECI Activities; and
       4. so as to maximise achievement of the ECI Objectives;
    2. exercise a duty of utmost good faith to the Commonwealth in performing the ECI Activities;
    3. provide the Contract Administrator with all information and documents relating to the ECI Activities required by the Contract or the Contract Administrator and otherwise keep the Contract Administrator fully and regularly informed about all matters affecting and relating to the performance of the ECI Activities; and
    4. use its best endeavours to achieve each Planning Phase Milestone by the relevant Planning Phase Milestone Date and otherwise perform the ECI Activities in accordance with any timeframe specified in the Contract.
  1. Contractor’s Obligations with Respect to the Design Consultant

The Contractor must:

* + 1. fully co-operate with the Design Consultant and carefully coordinate and integrate the ECI Activities with the activities carried out by the Design Consultant;
    2. provide recommendations, advice and comments to the Contract Administrator and the Design Consultant in respect of the progressive development of the planning and design of the Works so as to maximise achievement of the ECI Objectives;
    3. meet regularly and consult with the Contract Administrator and the Design Consultant to review the progress of the planning and design of the Works against the ECI Objectives, including in the context of any recommendations, advice and comments made in accordance with paragraph (b) and the outcome of the ECI Activities;
    4. submit written reports to the Contract Administrator as part of each Planning Phase Milestone (or at such other times as requested by the Contract Administrator) recording all recommendations made in accordance with paragraph (b), consultations with the Contract Administrator and Design Consultant under paragraph (c) and the outcome of any activities performed by the Contractor in accordance with the ECI Brief; and
    5. provide all reasonable assistance to the Design Consultant to allow the Design Consultant to develop the design of the Works and perform its other services.
  1. Planning Phase Program

The Contractor must:

* + 1. within 14 days of the Award Date, prepare a Planning Phase Program which must be based on and substantially consistent with:
       1. the initial program in relation to the Planning Phase lodged by the Contractor in its tender for the Contractor's Activities (as may be updated prior to the Award Date with the approval of the Commonwealth); and
       2. the program for the performance of the services by the Design Consultant as notified by the Contract Administrator; and
    2. otherwise comply with clause 10.2 in respect of the Planning Phase Program.
  1. Delivery Phase Program
     1. The Contractor must:
        1. within 28 days of the Award Date, prepare a Delivery Phase Program (based on the Outline Delivery Phase Program); and
        2. regularly review and update the Delivery Phase Program throughout the Planning Phase (at a minimum, as a condition precedent to achieving each Planning Phase Milestone),

in each case, so that the Delivery Phase Program complies with the requirements of the Contract.

* + 1. The Delivery Phase Program must:
       1. be prepared by reference to the latest Planning Phase Design Documentation and be reconciled against, and so as to show all deviations from, the Outline Delivery Phase Program;
       2. be prepared so as to maximise:
          1. all opportunities for time savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the other requirements of the Contract; and
          2. opportunities for staging and sequencing the Works so as to:

avoid disruptions to the Commonwealth (and, if applicable, Other Contractors); and

enable the Commonwealth to have use of facilities forming part of the Works safely and as soon as possible;

* + - 1. include a proposed Date for Completion of the Works or each Stage, provided that (unless otherwise agreed in writing by the Contract Administrator, in its absolute discretion) no proposed Date for Completion can be after the latest Indicative Date for Completion;
      2. be in a format compatible with the software and any methodology in accordance with clause 10.2(a)(iv); and
      3. include all such other matters as the Contract Administrator may require in writing.
    1. The Contractor must:
       1. submit each Delivery Phase Program to the Contract Administrator;
       2. if the Delivery Phase Program is rejected by the Contract Administrator (in the Contract Administrator's absolute discretion), submit an amended Delivery Phase Program to the Contract Administrator (within the time required by the Contract Administrator);
       3. obtain the Contract Administrator's written approval to the final Delivery Phase Program as a condition precedent to Delivery Phase Approval; and
       4. in the process of preparing and updating the Delivery Phase Program, co-operate with the Design Consultant, the Commonwealth, the Contract Administrator and all other people nominated by the Contract Administrator (including any third party engaged in accordance with paragraph (d)), including for the purpose of furthering the considerations referred to in paragraph (b)(ii).
    2. To assist the Contract Administrator in reviewing the Delivery Phase Program, the Contract Administrator or any other person on behalf of the Commonwealth may engage a third party to perform an external review of the Delivery Phase Program (at the Contractor's cost if the review demonstrates that the draft program does not meet the requirements of the Contract).
  1. Cost Planning
     1. The Contractor must:
        1. within 28 days of the Award Date, prepare a cost plan (based on the Outline Cost Plan); and
        2. update the cost plan throughout the Planning Phase (at a minimum, as a condition precedent to achieving each Planning Phase Milestone),

in each case, so that the cost plan complies with the requirements of the Contract.

* + 1. The Contractor must:
       1. ensure that each cost plan is prepared by reference to the latest Planning Phase Design Documentation and is reconciled against, and so as to show all deviations from, the Outline Cost Plan;
       2. adopt an "open book" approach to the process of preparing each cost plan and allow the Contract Administrator to access any quotations, correspondence, trade estimates, information from previous projects or other relevant information as may be requested by the Contract Administrator or which would otherwise facilitate and expedite the cost planning process;
       3. ensure that each cost plan is prepared so as to:
          1. maximise value for money for the Commonwealth; and
          2. without limiting subsubparagraph A, identify cost savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the other requirements of the Contract; and
       4. without limiting the foregoing, use its best endeavours to ensure that the proposed Delivery Phase Price does not exceed the Indicative Delivery Phase Price.
    2. Each cost plan prepared by the Contractor must include:
       1. a detailed breakdown of the proposed Delivery Phase Price by reference to each line item of the work comprising the Contractor's Activities including, where the proposed Delivery Phase Price differs from the Indicative Delivery Phase Price, details of and a validation of such difference including by reference to the matters set out in paragraph (b); and
       2. all such other matters as the Contract Administrator may require in writing.
    3. The Contractor must:
       1. submit each cost plan to the Contract Administrator;
       2. if any cost plan submitted by the Contractor is rejected by the Contract Administrator (in the Contract Administrator's absolute discretion), submit an amended cost plan to the Contract Administrator (within the time required by the Contract Administrator);
       3. obtain the Contract Administrator's written approval to the final cost plan as a condition precedent to Delivery Phase Approval; and
       4. in the process of preparing a cost plan (or amended cost plan), co-operate with the Commonwealth, the Contract Administrator and all other people nominated by the Contract Administrator, including any third party engaged in accordance with paragraph (e).
    4. To assist the Contract Administrator in reviewing a cost plan, the Contract Administrator or any other person on behalf of the Commonwealth may engage a third party to perform an external audit of the cost plan (at the Contractor's cost if the audit demonstrates that the cost plan does not meet the requirements of the Contract).
  1. Other Planning Phase Obligations

In addition to the Contractor's other obligations under this clause 2, the Contactor must do all such things or tasks as may be necessary to:

* + 1. assist the Commonwealth to achieve all Relevant Approvals including to provide such information and assistance as the Contract Administrator may require in writing for the purpose of obtaining the Relevant Approvals; and
    2. otherwise achieve Delivery Phase Approval and provide the Commonwealth with such other assistance as the Contract Administrator may require in connection with the Contractor's Activities or the Works,

before the Date for Delivery Phase Approval.

* 1. Site Access During the Planning Phase
     1. The Commonwealth will use its reasonable endeavours to provide the Contractor with such access to the Site during the Planning Phase as may be reasonably necessary for the carrying out of the relevant ECI Activities.
     2. The Contractor acknowledges and agrees that, without limiting paragraph (a), Site access during the Planning Phase will be contingent upon:
        1. the Commonwealth having a right of access to the Site;
        2. any Approvals required for Site access having been obtained;
        3. the Environmental Management Plan, Site Management Plan and Work Health and Safety Plan having been finalised under clause 9.2;
        4. the Contractor having provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.4(f) that the Contractor has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.4(a)(i);
        5. the Contractor having submitted a request in writing to the Contract Administrator during the Planning Phase for access to the Site setting out:
           1. the areas of the proposed access;
           2. the timing of the proposed access;
           3. the reasons why the proposed access is necessary to enable the Contractor to commence and progress the ECI Activities; and
           4. the mitigation measures that the Contractor proposes to put in place to avoid any disruption or inconvenience that may be caused to the Commonwealth, Other Contractors and any other person authorised by the Commonwealth or the Contract Administrator to occupy, use, operate, maintain or access the Site if the Contractor is given the proposed access;
        6. the Contractor's request under subparagraph (v) being approved by the Contract Administrator in writing; and
        7. the Contractor having otherwise satisfied the conditions precedent to access specified in the Contract Particulars.
  2. Negotiations Prior to Delivery Phase Approval
     1. The Contractor must:
        1. as part of the process of preparing the final Delivery Phase Program for approval under clause 2.5(c)(iii) and final cost plan for approval under clause 2.6(d)(iii); and
        2. in any event by no later than the Date for Delivery Phase Approval,

undertake genuine and good faith negotiations with the Commonwealth to reach agreement, in the Commonwealth's absolute discretion, as to:

* + - 1. the Delivery Phase Price;
      2. the Date for Completion of the Works or each Stage; and
      3. any other amendments to the Contract Particulars or other documents forming part of the Contract,

having regard to:

* + - 1. the Indicative Delivery Phase Price and the Indicative Date for Completion of the Works or each Stage;
      2. any change in the scope, cost of and resources required for the Delivery Phase arising out of the design development, cost planning and programming carried out in the Planning Phase;
      3. the requirements of any Relevant Approval to the extent such requirements arose or were imposed after the Award Date; and
      4. the considerations in clauses 2.5(b)(ii) and 2.6(b)(iii);
    1. If agreement on all the matters in paragraph (a) is reached by the Date for Delivery Phase Approval, then:
       1. the Commonwealth will record that agreement in the Delivery Phase Terms; and
       2. the Contractor must execute the Delivery Phase Terms on the date required by the Commonwealth, provided that the Delivery Phase Terms are subject to, and will only take effect upon, execution by the Commonwealth and Delivery Phase Approval being achieved in accordance with clause 2.10(a)(i).
    2. Notwithstanding anything else in the Contract, the parties must not execute the Delivery Phase Terms until all Relevant Approvals have been obtained.
  1. Delivery Phase Approval
     1. The Commonwealth must:
        1. if Delivery Phase Approval is achieved: 
           1. issue a written notice to the Contractor stating that Delivery Phase Approval has been achieved; and
           2. execute and date the Delivery Phase Terms on the same date that the notice is issued under subsubparagraph A; and
        2. if Delivery Phase Approval has not been achieved or the Commonwealth has elected (in its absolute discretion and for any reason) not to proceed to the Delivery Phase with the Contractor, issue a written notice so advising the Contractor, in which case clause 2.12 will apply.
     2. If the Commonwealth issues a notice under paragraph (a)(i)A, then:
        1. the parties will, immediately upon the issue of the notice, be deemed to have:
           1. terminated the Contract; and
           2. entered into a new contract on the same terms as the Contract as amended by the Delivery Phase Terms (and from that point (other than in subsubparagraph A) a reference to "Contract" will be a reference to that new contract on those amended terms), under which the Contractor will design (to the extent required by the Contract), construct, commission, complete and handover the Works;
        2. the Commonwealth must give the Contractor sufficient access to the Site to allow it to commence execution of the Works on the later of:
           1. the date for access to the Site specified in the Contract Particulars;
           2. the Contractor having provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.4(f) that the Contractor has caused to be effected and maintained or otherwise have the benefit of the insurances then required under clause 5.4;
           3. the Project Plans having been finalised under clause 9.2; and
           4. the satisfaction of the conditions precedent to access specified in the Contract Particulars,

and, subject to other provisions of the Contract affecting access, continue to allow the Contractor to have sufficient access to the Site to enable it to carry out the Contractor's Activities; and

* + - 1. the Contractor must immediately commence to carry out the remainder of the Contractor's Activities in accordance with the Contract.
  1. Phased Engagement
     1. The Contractor acknowledges and agrees that:
        1. the Commonwealth may, in its absolute discretion, issue a notice under clause 2.10(a)(ii) if Delivery Phase Approval has not been achieved by the Date for Delivery Phase Approval;
        2. it will have no entitlement to design, construct, commission, complete or handover the Works during the Delivery Phase (and there will be no contract between the parties in respect of such matters) unless the Commonwealth issues a notice under clause 2.10(a)(i)A;
        3. the splitting of the Contractor's Activities into the Planning Phase and the Delivery Phase is solely for the benefit of the Commonwealth including, without limiting the other elements required to achieve Delivery Phase Approval, to:
           1. enable all Relevant Approvals to be obtained;
           2. enable the Commonwealth to be satisfied (in its absolute discretion) that it will maximise value for money for the Commonwealth to have the Contractor proceed with the Delivery Phase;
           3. give the Commonwealth an opportunity to elect (in its absolute discretion and for any reason) not to proceed with the Contractor from the Planning Phase to the Delivery Phase; and
           4. reach agreement in relation to the matters contemplated in clause 2.9 (in its absolute discretion),

and the rights and obligations of the parties and the functions of the Contract Administrator are to be construed accordingly; and

* + - 1. as a result of the matters described above, there may be periods of inactivity of various durations in and between the Planning Phase and the Delivery Phase. Such periods of inactivity will not amount to a suspension under clause 10.11 and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with such periods of inactivity.
    1. The Commonwealth may, in the Commonwealth’s absolute discretion, at any time and from time to time, by written notice to the Contractor unilaterally extend the Date for Delivery Phase Approval.
    2. Neither an extension under paragraph (b),nor the issue of a notice under clause 2.10(a)(ii), will:
       1. limit or affect the Contractor's obligations or liabilities under this Contract or prejudice the right of the Commonwealth to exercise any right or remedy (including recovery of damages, whether while electing to keep the Contract on foot or after termination) which it may have where the Contractor breaches the Contract, whether under the Contract or otherwise according to law; or
       2. entitle the Contractor to bring a Claim against the Commonwealth.
    3. The Contractor acknowledges that any Act of Prevention which prevents Delivery Phase Approval being achieved by the Date for Delivery Phase Approval will not:
       1. entitle the Contractor to bring a Claim against the Commonwealth; or
       2. limit or affect any right of the Commonwealth or the Contract Administrator, including the right of the Commonwealth to elect not to proceed with the Contractor to deliver the Works or to issue a notice under clause 2.10(a)(ii),

whether on the basis that the obligation to finalise, agree, achieve or obtain the relevant matter has become an obligation to finalise, agree, achieve or obtain the relevant matter within a reasonable time or on any other basis at law or in equity.

* + 1. The Contractor acknowledges that:
       1. an absolute discretion in the Contract Administrator or the Commonwealth under clause 2 is not required to be exercised for the benefit of the Contractor;
       2. neither the Contract Administrator nor the Commonwealth is bound to exercise any such absolute discretion in any particular manner or having regard to any particular consideration notwithstanding that such considerations might be stated in the Contract;
       3. no provision of clause 2 conferring such an absolute discretion gives the Contractor any rights (including any right to make any Claim arising out of the exercise or failure to exercise the discretion); and
       4. the exercise or failure to exercise such an absolute discretion is not capable of being the subject of a dispute or difference for the purpose of clause 15 or otherwise subject to review.
    2. The Contractor acknowledges that none of:
       1. Delivery Phase Approval being achieved;
       2. the issuance by the Commonwealth of a notice under clause 2.10(a);
       3. any review of, comment upon, approval of, consent to or rejection of, or failure to review, comment upon, approve, consent to or reject, or any negotiation in respect of, any matter relevant to achieving Delivery Phase Approval (including any cost plan prepared in accordance with clause 2.6) or any obligation of the Contractor during the Planning Phase including in respect of the performance of the Contractor's obligations under this clause 2; and
       4. the carrying out of the ECI Activities or any other fact, matter or thing during the Planning Phase,

will:

* + - 1. relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract (whether in respect of the Planning Phase or the Delivery Phase) or otherwise at law or in equity;
      2. prejudice the Commonwealth's rights against the Contractor under the Contract (whether in respect of the Planning Phase or the Delivery Phase) or otherwise at law or in equity; or
      3. constitute an admission by the Commonwealth that the Contractor has duly performed and discharged its obligations under the Contract during the Planning Phase.
  1. Failure to Achieve Delivery Phase Approval

If the Commonwealth issues a notice under clause 2.10(a)(ii), then:

* + 1. the Contractor will:
       1. have no entitlement to design, construct, commission, complete or handover any part of the Works;
       2. be entitled to payment of the Planning Phase Price due and payable for the Contractor's Activities completed in accordance with the Contract before issue of the relevant notice; and
       3. not be entitled to payment of any portion of the Delivery Phase Price or to make any Claim (to the extent permitted by law) against the Commonwealth arising out of, or in any way in connection with, the relevant notice, this Contract, the Contractor's Activities or the Works other than for the amount payable under subparagraph (ii);
    2. the Contractor must:
       1. comply with clause 21.3 and, if clause 22 applies, clause 22.4, including by handing over to the Contract Administrator copies (or, where required by the Contract Administrator, originals) of all Project Documents prepared by the Contractor to the date of issue of the relevant notice (whether complete or not);
       2. immediately take all steps necessary to novate to the Commonwealth (or its nominee) any of the subcontractors required by the Contract Administrator to be novated; and
       3. co-operate with the Commonwealth and any third parties required by the Contract Administrator and take all other steps necessary to ensure that the Commonwealth is able to re-tender or procure the execution of the Works under paragraph (c)(i); and
    3. the Commonwealth may:
       1. re-tender the execution of the Works (whether with or without obtaining a tender from the Contractor) or procure the execution of the Works in any other manner which the Commonwealth may determine; and
       2. without limiting the licence granted under clause 6.8, use the Project Documents for the purposes of re-tendering or procuring the execution of the Works under subparagraph (i).

1. PERSONNEL
   1. Contract Administrator
      1. The Contract Administrator will give directions and carry out all of the other functions of the Contract Administrator under the Contract as the agent of the Commonwealth (and not as an independent certifier, assessor or valuer).
      2. The Contractor must:
         1. comply with any direction by the Contract Administrator given or purported to be given under a provision of the Contract; and
         2. not comply with any direction of the Commonwealth other than as expressly stated in the Contract.
      3. Except where the Contract otherwise provides, the Contract Administrator may give a direction orally but will as soon as practicable confirm it in writing.
   2. Replacement of Contract Administrator
      1. The Commonwealth may at any time replace the Contract Administrator, in which event the Commonwealth will appoint another person as the Contract Administrator and notify the Contractor of that appointment.
      2. Any substitute Contract Administrator appointed under clause 3.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.
   3. Parties' Conduct

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

* 1. Contract Administrator's Representative
     1. The Contract Administrator may:
        1. by written notice to the Contractor appoint persons to exercise any of the Contract Administrator’s functions under the Contract; and
        2. revoke any appointment under subparagraph (i) by notice in writing to the Contractor.
     2. As at the Award Date, the Contract Administrator is deemed to have appointed the persons specified in the Contract Particulars to carry out the functions specified in the Contract Particulars.
     3. All references in the Contract to the Contract Administrator include a reference to a representative appointed under clause 3.4.
  2. Contractor's Representative
     1. The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
     2. A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
  3. Key People for the Contractor's Activities

The Contractor must:

* + 1. employ those people specified in the Contract Particulars, including the Contractor's Representative, in the jobs specified in the Contract Particulars;
    2. subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and
    3. if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.
  1. Removal of Persons
     1. The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent, negligent or is otherwise not a fit and proper person to be engaged in connection with the Contractor’s Activities.
     2. The Contractor must ensure that the person referred to in the Contract Administrator’s notice under paragraph (a) is not again involved in the Contractor's Activities.
  2. Industrial Relations

In carrying out the Contractor's Activities, the Contractor must:

* + 1. assume sole responsibility for and manage all aspects of industrial relations;
    2. ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
    3. keep the Contract Administrator fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
    4. comply with all other requirements of the Contract relating to industrial relations.
  1. Monthly Meeting
     1. The Contractor must:
        1. meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates;
        2. discuss the report it has prepared under clause 3.10 and such other matters as the Contract Administrator may from time to time require;
        3. promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
        4. if it requires instructions from the Commonwealth, make all necessary recommendations with respect to the instructions required.
     2. The Contract Administrator must:
        1. before each meeting:
           1. prepare an agenda for the meeting; and
           2. issue an agenda for the meeting; and
        2. after each meeting:
           1. prepare minutes of the meeting; and
           2. issue minutes of the meeting.
  2. Contractor's Monthly Report

At least 7 days prior to each meeting under clause 3.9, the Contractor must provide the Contract Administrator with a monthly report in such form as the Contract Administrator requires from time to time and which must include at a minimum:

* + 1. detailed particulars of the progress of the Contractor's Activities and the Works including:
       1. key activities, meetings and other events in the previous month;
       2. if the Contract requires the Contractor to design any part of the Works, the status of all Design Documentation (including any dispensations being pursued in accordance with the Infrastructure Directorate Dispensations Process);
       3. the status of all Approvals;
       4. photographs of the Contractor's Activities and the Works; and
       5. any deviations from the then current Planning Phase Program or Delivery Phase Program (as the case may be);
    2. detailed particulars of all:
       1. payment claims, payment statements and payments;
       2. Variation Price Requests, responses, Variation Orders, Contractor requests for Variations under clause 11.7 and proposed adjustments to the Contract Price;
       3. written claims and notices given and received under clause 10 in respect of delays and extensions of time and extensions of time to the Date for Completion;
       4. other Claims made by the Contractor (including in respect of Latent Conditions, Statutory Requirements and the resolution of ambiguities under clause 6.11);
       5. calls, attendances, recommendations and actions taken in respect of all Defects (in accordance with clause 9.15);
       6. disputes under clause 15; and
       7. notices under clause 16.1 or 16.2;
    3. detailed particulars of any risks, opportunities, issues or matters which in the Contractor's opinion:
       1. are significantly impacting; or
       2. have the potential to significantly impact,

the Contractor's Activities or the Works (in terms of time, cost or quality) and the preventative and remedial action which has been, is being or is proposed to be taken in respect of such risks, opportunities, issues or matters;

* + 1. confirmation of compliance with the WHS Legislation (as if it applied to the Contractor) and detailed particulars of all work health and safety matters arising out of or in connection with clause 8.17, including:
       1. the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 9.2);
       2. details of all proactive risk management measures implemented by the Contractor to prevent systemic work health and safety issues, incidents or accidents during the Contractor's Activities and the Works;
       3. details of lead indicator data, including:
          1. inductions, training and other work health and safety awareness programmes conducted;
          2. Site audits and verification activities (including copies of Site audit reports and verification activity reports); and
          3. inspections of Plant, Equipment and Work;
       4. without limiting the Contractor's obligations to notify the Contract Administrator under:
          1. clauses 8.17(a) and 8.17(c)(i), summary data regarding notifiable incidents; and
          2. clause 8.17(c)(ii) and (iii), details of all incidents and accidents and the preventative, corrective and remedial action which has been, is being or is proposed to be taken in respect of such incidents and accidents;
       5. relevant statistics and other information regarding lost time injury days; and
       6. all other work health and safety matters required by the Contract or the Contract Administrator;
    2. confirmation of compliance with, and (as applicable) an update in respect of:
       1. Site-related requirements, including the Site Management Plan;
       2. commissioning, training and handover requirements, including the Project Lifecycle and HOTO Plan and Annexure 1;
       3. local industry participation requirements, including the Local Industry Capability Plan;
       4. environmental requirements, including the Environmental Management Plan;
       5. fraud and corruption control requirements, including the Fraud and Corruption Control Plan;
       6. information security requirements, including clause 21 and, if clause 22 applies, clause 22; and
       7. any other security requirements,

together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (vii);

* + 1. in respect of Hazardous Substances (if any) any information as required by the Special Conditions; and
    2. any other matters required by the Contract Administrator.
  1. Meetings and Reports Generally

Without limiting clauses 3.9 and 3.10, the Contractor must comply with any additional meeting and reporting requirements specified in the Contract Particulars or notified by the Contract Administrator from time to time.

1. SECURITY
   1. Form

The Contractor must, as a condition precedent to Delivery Phase Approval, provide security to the Commonwealth:

* + 1. in the form of Approved Security; and
    2. in the amounts specified in the Contract Particulars for the Works or a Stage.
  1. Release of Security

Subject to any other rights or remedies of the Commonwealth under the Contract or otherwise at law or in equity (including the right of set-off in clause 12.17), the Commonwealth must:

* + 1. within 14 days of the later of:
       1. the issue of a Notice of Completion for the Works or a Stage; and
       2. the non-rejection under clause 25 of the documents and other information required under clause 25.1(c) for the Works or a Stage,

release from the security held under clause 4.1, 50% of the security held for the Works or the Stage under clause 4.1;

* + 1. within 14 days of the expiration of the Defects Liability Period for the Works or a Stage (excluding any extensions under clause 9.11), release such amount of the security under clause 4.1 then held for the Works or the Stage, as the Contract Administrator determines to be reasonable, having regard to the work to which any remaining Defects Liability Period applies, to ensure the Commonwealth's interests are not prejudiced; and
    2. release the balance of the security then held under clause 4.1 following the latest of:
       1. the expiry of the last Defects Liability Period; or
       2. the Contractor has complied with all its obligations under the Contract.
  1. Interest
     1. The Commonwealth:
        1. is not obliged to pay the Contractor interest on:
           1. the Approved Security; or
           2. subject to paragraph (b), the proceeds of the Approved Security if it is converted into cash; and
        2. does not hold the proceeds or money referred to in subparagraph (i) on trust for the Contractor.
     2. If the Commonwealth makes a call upon any security held under clause 4.1 and obtains cash as a consequence:
        1. the Commonwealth will pay simple interest, at the rate applying to damages for the purpose of clause 12.15, on the amount of any cash obtained in excess of the sum to which the Commonwealth 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 Commonwealth at the time such amounts become payable.
  2. Deed of Guarantee, Undertaking and Substitution

Clause 4.4 applies unless the Contract Particulars state that it does not apply.

The Contractor must provide to the Commonwealth a Deed of Guarantee, Undertaking and Substitution duly executed by the Contractor and the Related Body Corporate of the Contractor specified in the Contract Particulars as a condition precedent to Delivery Phase Approval.

1. RISKS AND INSURANCE
   1. Risk of Works

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

* + 1. any physical loss of or damage to:
       1. the Works or a Stage;
       2. Plant, Equipment and Work; and
       3. unfixed goods and materials (whether on or off Site), including anything provided by the Commonwealth 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 physical loss of or damage to the Works or a Stage, a Notice of Completion is issued for the Works or the Stage; and
      2. otherwise, a Notice of Completion is issued for the Works or the last Stage to reach Completion; and
    1. after the issue of a Notice of Completion for the Works or the Stage, any physical loss of or damage to the Works or the Stage 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 Notice of Completion for the Works or the Stage.
  1. Other Risks

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

* + 1. any physical loss of or damage to property of the Commonwealth (other than property referred to in clause 5.1(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 Commonwealth will be reduced to the extent that an act or omission of the Commonwealth, the Contract Administrator or an Other Contractor contributed to the loss, damage, injury or death.

* 1. Reinstatement
     1. During the period during which the Contractor bears the risk of physical loss or damage under clause 5.1, the Contractor must:
        1. subject to subparagraph (ii), promptly replace or otherwise make good any physical loss of, or repair the damage to, the Works or the Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities; and
        2. where the physical loss or damage arises from a Commonwealth Risk, only comply with subparagraph (i) to the extent directed by the Contract Administrator.
     2. If paragraph (a)(i) applies, the Contractor will bear the cost of such replacement, making good or repair. If paragraph (a)(ii) applies, the replacement, making good or repair directed by the Contract Administrator will be treated as if it were a Variation the subject of a direction by the Contract Administrator and clause 11.3 applied.
  2. Contractor Insurance Obligations

The Contractor must:

* + 1. cause to be effected and maintained or otherwise have the benefit of the following insurance:
       1. from the Award Date:
          1. Public Liability Insurance;
          2. Workers Compensation Insurance;
          3. Employers' Liability Insurance;
          4. whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars; and
          5. such other insurances on such terms as are specified in the Contract Particulars; and
       2. as a condition precedent to Delivery Phase Approval:
          1. Construction Risks Insurance;
          2. if it has been included in the Contract Particulars, Marine Transit Insurance; and
          3. such other insurances on such terms as are specified in the Contract Particulars,

each of which must be:

* + - 1. for the amounts specified in the Contract Particulars;
      2. with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
      3. on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
    1. in relation to Construction Risks Insurance, Public Liability Insurance and (if applicable) Marine Transit Insurance, ensure that each of these policies name the Commonwealth as a party (within the definition of ‘Insured’) to whom the benefit of the insurance cover extends;
    2. in relation to the Workers Compensation Insurance and Employers' Liability Insurance ensure that:
       1. to the extent permitted by law, the insurance extends to provide indemnity to the Commonwealth as the Contractor's principal in respect of any statutory and common law liability to the Contractor's employees; and
       2. each of its subcontractors has Workers Compensation Insurance, to the extent required by law, and Employers' Liability Insurance covering the subcontractor in respect of its statutory and common law liability to its employees, in the same manner as the Contractor is required to do under subparagraph (i);
    3. in relation to the Public Liability Insurance and (if applicable) Marine Transit Insurance, ensure the insurance is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which (in the case of Public Liability Insurance) the Contractor's Activities are being carried out or (in the case of Marine Transit Insurance) from or through which relevant materials, components or things may transit;
    4. in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars, ensure the insurance:
       1. has a retroactive date of no later than the commencement of the Contractor's Activities; and
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out;
    5. promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
       1. it has complied with clause 5.4; and
       2. each insurance required under clause 5.4 is current and complies with clause 5.4,

as required by the Contract Administrator from time to time;

* + 1. ensure that:
       1. if the insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy, the Contractor as soon as possible informs the Commonwealth in writing that the notice has been given and effects replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract; and
       2. if the Contractor cancels, rescinds or fails to renew any required insurance policy, the Contractor as soon as possible obtains replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;
    2. ensure that it:
       1. does not do or omit to do anything whereby any insurance may be prejudiced;
       2. complies at all times with the terms of each insurance policy;
       3. if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
       4. punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contract Administrator copies of receipts for payment of premiums upon request by the Contract Administrator;
       5. renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
       6. immediately notifies the Contract Administrator (in writing) if the Contractor fails to renew any required insurance policy or pay a premium;
       7. does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
       8. immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded;
       9. complies fully with its duty of disclosure and obligation of utmost good faith toward the insurer and in connection with all of the required insurance policies;
       10. does everything reasonably required by the Commonwealth and the Contract Administrator to enable the Commonwealth to claim and to collect or recover money due under any of the insurances in respect of which it is required to have the benefit of coverage under this Contract; and
       11. maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim;
    3. ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause 5.4 for the amounts specified in the Contract Particulars; and
    4. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Contractor under this clause 5.4. Any excess borne by the Commonwealth will be a debt due from the Contractor to the Commonwealth.

For the purpose of paragraph (f), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.4.

The obtaining of insurance as required under clause 5.4 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
     1. If the Contractor fails to comply with clause 5.4, the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) take out the relevant insurance and the cost of such insurances will be a debt due from the Contractor to the Commonwealth.
     2. The Contractor must take all necessary steps to assist the Commonwealth in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), "**all necessary steps**" includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth.
  2. Period of Insurance

The insurance which the Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.4 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 5.1;
    2. in the case of Public Liability Insurance:
       1. if Delivery Phase Approval is achieved:
          1. written on an occurrence basis, until the completion of the Contractor's Activities; or
          2. written on a claims made basis, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:

end of the last Defects Liability Period;

date upon which all Defects have been rectified in accordance with the Contract; and

completion of the Contractor's Activities; or

* + - 1. if the Commonwealth issues a notice under clause 2.10(a)(ii):
         1. written on an occurrence basis, until the completion of the Contractor's Activities; or
         2. written on a claims made basis, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:

last day of the Planning Phase; and

completion of the Contractor's Activities;

* + 1. in the case of Workers Compensation Insurance and Employers' Liability Insurance:
       1. if Delivery Phase Approval is achieved, until the latest of the:
          1. end of the last Defects Liability Period;
          2. date upon which all Defects have been rectified in accordance with the Contract; and
          3. completion of the Contractor's Activities; or
       2. if the Commonwealth issues a notice under clause 2.10(a)(ii), until the latest of the:
          1. last day of the Planning Phase; and
          2. completion of the Contractor's Activities;
    2. in the case of Professional Indemnity Insurance or Errors and Omissions Insurance:
       1. if Delivery Phase Approval is achieved, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
          1. end of the last Defects Liability Period;
          2. date upon which all Defects have been rectified in accordance with the Contract; and
          3. completion of the Contractor's Activities; or
       2. if the Commonwealth issues a notice under clause 2.10(a)(ii), until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
          1. last day of the Planning Phase; and
          2. completion of the Contractor's Activities; and
    3. in the case of Marine Transit Insurance, at all times during the transportation to or from the Site of goods, equipment, materials and things that will be used for, as a component in or in connection with the Contractor's Activities or the Works.
  1. Notice of Potential Claim

The Contractor must:

* + 1. as soon as possible inform the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 5.4 or any claim actually made against the Contractor or the Commonwealth which may be covered by an insurance policy required by clause 5.4;
    2. keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Contractor; and
    3. ensure that its subcontractors similarly inform the Contractor and the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Contract or any claim actually made against the Contractor, the subcontractor or the Commonwealth which may be covered by an insurance policy required by the Contract,

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

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

If loss of or damage to any part of the Works or a Stage occurs whilst the Contractor bears the risk of loss of or damage to the Works or the Stage under clause 5.1:

* + 1. the Contractor must:
       1. make the Works or the Stage and the Site safe and secure;
       2. notify the relevant insurers and comply with any reasonable instructions from the insurer(s); and
       3. promptly consult with the Contract Administrator to discuss the steps to be taken to:
          1. comply with its obligations under clause 5.3; and
          2. ensure that, to the greatest extent possible, the Contractor continues to comply with its other obligations under the Contract; and
    2. upon settlement of a claim under the Construction Risks Insurance relating to this loss or damage, the amount of money received from this insurance (excluding any amount provided for the fees of any of the Commonwealth's consultants) will:
       1. be paid to the Contractor in accordance with the procedure in clauses 12.2 - 12.5 as and when the Contractor replaces, makes good or repairs the loss of or damage to the Works or the Stage; and
       2. be the limit of the Contractor's entitlement to payment for the replacement, making good or repair of the loss or damage to the Works or the Stage.
  1. Cross Liability
     1. Clause 5.9 does not apply to Professional Indemnity Insurance, Errors and Omissions Insurance or Workers Compensation Insurance.
     2. Where the Contract requires insurance to provide cover to more than one insured, the Contractor must ensure that, to the extent permitted by law, the insurance policy provides that:
        1. the insurer agrees to treat each insured as a separate insured as though a separate contract of insurance had been entered into with each insured, without increasing the overall limit of indemnity;
        2. the insurer will not impute to any insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured;
        3. the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom the benefit of insurance cover 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;
        4. a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds; and
        5. the insurer agrees not to reduce or exclude the insurance cover of an insured because the:
           1. liability of the insured is limited by the operation of the proportionate liability legislation of any Australian jurisdiction or the Host Nation; or
           2. proportionate liability legislation of any Australian jurisdiction or the Host Nation is lawfully excluded by the contract.
  2. Insurances Secondary
     1. The Commonwealth is not obliged to make a claim or institute proceedings against any insurer under the insurances before enforcing any of its rights or remedies under the indemnities referred to in this Contract or generally.
     2. The Contractor is not relieved from and remains fully responsible for its obligations and liabilities in accordance with this Contract and at law regardless of whether the insurances respond or fail to respond to any claim and regardless of the reason why any insurance responds or fails to respond.
  3. Exclusion of Consequential Loss and Limitation on Liability
     1. Subject to paragraphs (b) and (c):
        1. neither the Commonwealth nor the Contractor will be liable to the other for any Consequential Loss howsoever arising; and
        2. to the extent permitted by law, the maximum aggregate liability of the Contractor to the Commonwealth arising out of or in connection with the Contract (whether arising in contract, in equity, tort (including negligence), by way of indemnity, under statute or otherwise at law) is limited to the amount specified in the Contract Particulars.
     2. Paragraph (a) does not apply to a liability of the Contractor:
        1. for any deliberate breach or repudiation of the Contract;
        2. under the indemnities in clauses 1.3(f), 5.1, 5.2, 6.10(b), 12.19, 18.1(a)(xiv), 19.6(c), 21.5(c), 22.6(c), and 23.3(c);
        3. for Fraud or breach of clause 19;
        4. to the extent that payments are received by the Contractor or the Contractor is entitled to be indemnified under any insurance policy or policies required to be effected and maintained under the Contract in relation to that liability, or payments would have been received by the Contractor or the Contractor would have been entitled to be indemnified under such insurance policy or policies but for:
           1. the failure of the Contractor to effect and maintain the required insurance policy or insurance policies;
           2. any failure of an insurance policy to respond due to the misconduct of the Contractor (including a misrepresentation to the insurer or a failure to make proper disclosure or to comply with the requirements of the policy);
           3. the failure by the Contractor to diligently pursue any claim for indemnity under any insurance policy or insurance policies; or
           4. the reliance by the insurer of the required insurance on this clause 5.11 to deny liability on the basis that the party has no liability to the Commonwealth;
        5. for fines or penalties incurred by the Commonwealth arising from the Contractor’s Activities; and
        6. in respect of paragraph (a)(i) only, for liquidated damages under clause 13.7.
     3. Paragraph (a)(i) does not apply to a liability of the Commonwealth for:
        1. any deliberate breach or repudiation of the Contract;
        2. Fraud; or
        3. fines or penalties incurred by the Contractor arising from an act or omission of the Commonwealth.

1. DESIGN AND DOCUMENTATION
   1. Contractor's Documentation Program

To the extent that the Contractor is required to design any part of the Works, the Contractor must, as part of the Delivery Phase Program it is to prepare under clause 2.5, submit to the Contract Administrator for approval a documentation program which makes allowance for the Design Documentation to be submitted to the Contract Administrator in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Design Documentation within the period of time within which the Contract Administrator may review the Design Documentation under clause 6.3.

* 1. Delivery Phase - Contractor's Design

In the Delivery Phase, the Contractor must:

* + 1. design the parts of the Works (if any) which the Contract requires it to design in accordance with the Works Description and the other requirements of the Contract and for this purpose (but without limitation) prepare all relevant Design Documentation;
    2. without limiting paragraph (a) or the Contractor's other obligations under the Contract, prepare all such Design Documentation and perform all other Contractor's Activities in respect of design (if any) so as to maximise achievement of the Design Objectives and Principles; and
    3. submit the Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under clause 6.1.
  1. Contract Administrator May Review Contractor’s Design
     1. The Contract Administrator may:
        1. review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and
        2. within the number of days specified in the Contract Particulars of the submission by the Contractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in the Contract Administrator's reasonable opinion the Design Documentation does not comply with the requirements of the Contract.
     2. If any Design Documentation is rejected:
        1. the Contract Administrator must notify the Contractor in writing and include details as to why the Design Documentation does not comply with the requirements of the Contract; and
        2. the Contractor must submit amended Design Documentation to the Contract Administrator.
     3. The Contractor must not commence construction of any part of the Works to which any Design Documentation it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number ofdays specified in the Contract Particulars to review the Design Documentation and has not rejected the Design Documentation.
  2. No Obligation to Review
     1. The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.
     2. No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Design Documentation prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Commonwealth in relation to, the Design Documentation will:
        1. relieve the Contractor from, or alter or affect, the Contractor's obligations whether under the Contract or otherwise at law or in equity; or
        2. prejudice the Commonwealth's rights against the Contractor whether under the Contract or otherwise at law or in equity.
  3. Copies of Contractor’s Design

For the purposes of clauses 6.2(c) and 6.3, the Contractor must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of Design Documentation in:

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

in accordance with the requirements specified in the Contract Particulars.

* 1. Fitness for Purpose

The Contractor warrants that:

* + 1. the Design Documentation it prepares will be fit for the purposes as set out in, or reasonably to be inferred from, the Works Description; and
    2. upon Completion, the Works or the Stage will, to the extent that the Works have or the Stage has been designed by the Contractor be fit for the purposes as set out in, or reasonably to be inferred from, the Works Description.
  1. Availability

The Contractor must keep available for the use of the Contract Administrator, the Commonwealth or anyone else acting on behalf of the Commonwealth:

* + 1. on the Site, one complete set of the Works Description, all Design Documentation (including all Design Documentation issued by the Contract Administrator under clause 8.8 if Option 1 of that clause applies), any documents provided by the Commonwealth under clause 6.1 and all other Project Documents directed in writing by the Contract Administrator; and
    2. at any area off-Site where the Contractor's Activities are being carried out, one complete set of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area.
  1. Licence over Project Documents

The Contractor grants to the Commonwealth a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Project Documents, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Project Documents.

This licence:

* + 1. arises, for each Project Document, immediately when the Project Document is:
       1. produced; or
       2. provided, or required to be provided, to the Commonwealth or the Contract Administrator,

under, for the purposes of, arising out of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor;

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

The Contractor warrants that:

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

The Contractor must:

* + 1. ensure that the Contractor's Activities do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
    2. indemnify the Commonwealth in respect of all claims against, and costs, losses, damages or liabilities suffered or incurred by, the Commonwealth arising out of or in connection with any actual or alleged infringement of any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right.
  1. Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Design Documentation (which the Contractor is entitled to use for construction purposes under clause 6.3) or any other Project Document:

* + 1. subject to paragraphs (b) and (c), the order of precedence specified in the Contract Particulars will apply;
    2. where the ambiguity, discrepancy or inconsistency is between the Works Description and any other requirement of the Contract (including any other requirement of the Works Description), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;
    3. where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Design Documentation or any other Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail; and
    4. irrespective of whether paragraphs (a) to (c) apply, if it is discovered by:
       1. the Contractor or the Commonwealth, then the party discovering it must promptly give the Contract Administrator and the other party notice in writing.  After receipt of a notice from a party the Contract Administrator must within 14 days of receipt of the notice instruct the Contractor as to the course it must adopt; or
       2. the Contract Administrator, then the Contract Administrator must promptly give the parties notice in writing together with an instruction to the Contractor as to the course it must adopt,

including, where applicable, by applying the principles in paragraphs (a) to (c) above.

* 1. Access to Premises and Project Documents

The Contractor must:

* + 1. at the request of the Commonwealth at any time during the Contractor's Activities and the period of 10 years following the latest of the:
       1. end of the last Defects Liability Period;
       2. date upon which all Defects have been rectified in accordance with the Contract; and
       3. completion of the Contractor's Activities,

provide and make available:

* + - 1. access to its premises and make the Project Documents available for inspection by the Contract Administrator or anyone else acting on behalf of the Commonwealth;
      2. such copies of the Project Documents as the Contract Administrator or anyone else acting on behalf of the Commonwealth may require, in such formats as may be required;
      3. all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth; and
      4. any officers, employees, agents or subcontractors for interviews with the Contract Administrator or anyone else acting on behalf of the Commonwealth; and
    1. ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under clause 6.12 as if the subcontractor were the Contractor.
  1. Contractor’s Design - Design Certification

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, if the Contract requires the Contractor to design any part of the Works, in the Delivery Phase the Contractor must, with each submission of Design Documentation under clause 6.2, payment claim under clause 12.2 and as a condition precedent to Completion, provide the Contract Administrator with:

* + 1. a certificate in the form of the Contractor Design Certificate which certifies that (to the extent then applicable):
       1. the Design Documentation complies with:
          1. subject to clause 8.3(b)(i), all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the Contract; and
       2. the Works comply or the Stage complies with the Design Documentation which the Contractor is entitled to use for construction purposes under clause 6.3(c); and
    2. a corresponding certificate from each subcontractor that performs design work forming part of the Contractor's Activities in the form of the Consultant Design Certificate or Subcontractor Design Certificate 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 Stage complies with the design carried out by that subcontractor,

except to the extent set out in such certificates.

* 1. Samples
     1. The Contractor must:
        1. obtain each sample or range of samples required by the Contract; and
        2. submit the sample or range of samples it obtains to the Contract Administrator in accordance with:
           1. in the Planning Phase, the Planning Phase Program; or
           2. in the Delivery Phase, the Delivery Phase Program.
     2. The Contract Administrator may:
        1. review the sample or range of samples, or any resubmitted sample or range of samples, submitted by the Contractor; and
        2. within the number of days specified in the Contract Particulars of the submission of such sample or range of samples or resubmitted sample or range of samples, reject the sample or range of samples if, in the reasonable opinion of the Contract Administrator, the sample or range of samples does not comply with the requirements of the Contract.
     3. If any sample or range of samples is rejected, the Contractor must submit an amended or substituted sample or range of samples to the Contract Administrator.
     4. The Contractor must not commence construction of any part of the Works to which the sample or range of samples which it has submitted to the Contract Administrator applies unless the Contract Administrator has had the number of days specified in the Contract Particulars to review the sample or range of samples and has not rejected the sample or range of samples.
     5. The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the sample or range of samples submitted by the Contractor for errors, omissions or compliance with the Contract.
     6. No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any sample or range of samples submitted by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Commonwealth in relation to, the sample or range of samples will:
        1. relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or
        2. prejudice the Commonwealth's rights against the Contractor whether under the Contract or otherwise at law or in equity.
  2. Methodology Statement

The Contractor:

* + 1. warrants that, without limiting its other obligations under this Contract, and to the extent not inconsistent with the Contract, it will at all times comply with the Methodology Statement in performing the Contractor's Activities;
    2. acknowledges that the Methodology Statement does not limit, qualify or otherwise fetter the Contractor's obligations under the Contract or otherwise at law or in equity; and
    3. must update and refine the Methodology Statement:
       1. at least on each anniversary of the Award Date;
       2. prior to the Date for Delivery Phase Approval; and
       3. when otherwise required by the Contract Administrator,

to ensure that the Methodology Statement remains consistent with the then finalised Project Plans, its obligations under the Contract and is otherwise suitable for the performance of the Contractor's Activities;

* + 1. must provide such updated Methodology Statements to the Contract Administrator for approval; and
    2. to the extent permitted by law, will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any work the Contractor is required to do under paragraph (c).

1. SITE
   1. Contractor to Inform Itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

* + 1. assessing the risks which it is assuming under the Contract; and
    2. ensuring that the Contract Price contains sufficient allowances to protect it against any of these risks eventuating,

including, in respect of risks arising in the Delivery Phase, as informed by the ECI Activities.

* 1. Site and Other Information

Without limiting clause 7.7 the:

* + 1. Commonwealth has made available to the Contractor before the Award Date, or may make available to the Contractor on or after the Award Date, certain information, data and documents obtained by the Commonwealth for the purpose of the Works, including from investigations it carried out as to the conditions on, in, under or in the vicinity of the Site;
    2. Commonwealth does not warrant, guarantee or make any representation about the relevance, completeness, accuracy or adequacy of any such information, data and documents made available to the Contractor;
    3. Contractor acknowledges that such information, data and documents do not form part of the Contract and that clause 7.7 applies to the information, data and documents; and
    4. Contractor acknowledges and agrees that, to the extent permitted by law, it will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with such information, data and documents.
  1. Notice of Latent Condition

Clauses 7.3 and 7.4 apply unless the Contract Particulars state that they do not apply.

* + 1. If the Contractor considers it has encountered or found a Latent Condition, it must immediately give the Contract Administrator and the Commonwealth notice in writing.
    2. The Contract Administrator must, within 14 days of receipt of the Contractor's notice under paragraph (a):
       1. notify the Contractor and the Commonwealth 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.
  1. Contractor's Entitlement
     1. If, in the Delivery Phase, the Contract Administrator determines that a Latent Condition has been encountered or found, 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 10.7; and
        2. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under clause 7.3(a) which arise directly from the Latent Condition and the Contract Administrator's instruction under clause 7.3(b)(ii), as determined by the Contract Administrator.
     2. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Latent Condition or the Contract Administrator's instruction under clause 7.3(b)(ii), other than under paragraphs (a)(i) and (a)(ii).
  2. Site Access Generally
     1. In carrying out the Contractor’s Activities, the Contractor must, and must ensure that its officers, employees, subcontractors and agents comply with:
        1. the requirements for Site access and conduct at the Site as are applicable to the Site from time to time including any requirements set out in the ECI Brief or Works Description; and
        2. any direction of the Contract Administrator in relation to Site access or conduct at the Site.
     2. The Commonwealth:
        1. is not obliged to:
           1. provide the Contractor with sole access to the Site; or
           2. carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities;
        2. may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor; and
        3. must use reasonable endeavours to ensure that any Other Contractors engaged by the Commonwealth comply with the reasonable requirements of the Contractor as to matters concerning industrial relations, insurance, site management and work health and safety.
     3. Failure by the Commonwealth to give access as required by clause 2.8 or 2.10(b)(ii) will not be a breach of the Contract but will, in respect of failure to provide access as required by clause 2.10(b)(ii) only, during the Delivery Phase, entitle the Contractor to:
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.7; and
        2. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the Commonwealth's failure to give the Contractor access to the Site, as determined by the Contract Administrator.
     4. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Commonwealth's failure to give the Contractor access to the Site, other than under paragraph (c).
  3. Contractor's Obligation to Provide Access

In carrying out the Contractor's Activities, the Contractor must:

* + 1. minimise disruption or inconvenience to the Commonwealth, the Host Nation, Other Contractors and any person authorised by the Commonwealth or the Contract Administrator to occupy, use, operate, maintain or access the Site in their occupation, use, operation or maintenance of or access to any part of the Site, including any occupation, use, operation or maintenance of or access to part of the Works or a Stage under clause 13.5;
    2. at all reasonable times give the Commonwealth, the Contract Administrator, Other Contractors and any person authorised by the Commonwealth or the Contract Administrator access to the Works, the Site or any areas off-Site where the Contractor's Activities are being carried out; and
    3. provide the Commonwealth, the Host Nation and the Contract Administrator with every reasonable facility necessary for the supervision, examination, inspection and testing of the Contractor's Activities or the Works.
  1. Non-Reliance

The Contractor:

* + 1. warrants that it did not in any way rely upon:
       1. any information, data, representation, statement or document made by or provided to the Contractor by the Commonwealth or anyone on behalf of the Commonwealth (including any information, data and documents provided under clause 7.2(a)); or
       2. the relevance, completeness, accuracy or adequacy of any such information, data, representation, statement or document,

for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;

* + 1. warrants that it enters into the Contract and will carry out the Contractor's Activities based on its own investigations, interpretations, deductions, information and determinations; and
    2. acknowledges and agrees that the Commonwealth has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

1. Carrying out of the Contractor’s Activities
   1. Description of Works

Subject to clause 6.11, the Contractor must construct the Works in accordance with:

* + 1. the Works Description and any Design Documentation issued by the Contract Administrator under clause 8.8 (if Option 1 of that clause applies);
    2. if the Contract requires the Contractor to design any part of the Works, any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use for construction purposes under clause 6.3;
    3. any direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Variation directed by the Contract Administrator by a document titled "Variation Order"; and
    4. the other requirements of the Contract.
  1. All Work Included
     1. The Contractor has allowed for the provision of all Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Works Description or any Design Documentation.
     2. Any such Plant, Equipment and Work, materials and other work:
        1. must be undertaken and provided by the Contractor; and
        2. forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.
  2. Statutory Requirements
     1. The Contract Particulars specify the Approvals which exist at the Award Date or which the Commonwealth will obtain after the Award Date.
     2. In carrying out the Contractor's Activities, the Contractor must:
        1. unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
        2. without limiting subparagraph (i):
           1. apply for and obtain all Approvals other than those specified in the Contract Particulars; and
           2. give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations;
        3. provide the Commonwealth with all assistance reasonably required to enable the Commonwealth to obtain, or satisfy or fulfil the conditions and requirements of, any Approvals the subject of paragraph (a); and
        4. promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Contractor's Activities or the Works issues to the Contractor.
     3. Without limiting paragraph (b), the Contractor must:
        1. comply with the Additional Host Nation Requirements;
        2. not engage in any political or unlawful activity during the carrying out of the Contractor's Activities in the Host Nation; and
        3. use its best endeavours to ensure that all its officers, employees, subcontractors and agents do not to engage in unlawful activity or misconduct during the carrying out of the Contractor’s Activities in the Host Nation.
     4. Without limiting paragraph (b), the Contractor must not commence to carry out any element of the Works or a Stage unless an Environmental Clearance Certificate has been issued in respect of the relevant element.
  3. Change in Statutory Requirements or Variance with Contract
     1. If:
        1. there is any change in a Statutory Requirement after the Award Date; or
        2. a Statutory Requirement is at variance with the Contract,

then the party discovering the change or variance must promptly give the Contract Administrator and the other party notice in writing.

* + 1. The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the change or variance.
    2. Subject to paragraph (d), the Contractor will be entitled, where the change or variance occurs in the Delivery Phase, to: 
       1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.7; and
       2. have the Delivery Phase 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 change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.
    3. The Delivery Phase Price will be decreased by any saving made by the Contractor which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.
    4. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the change or variance or the Contract Administrator's instruction under paragraph (b), other than under paragraph (c)(i) and (ii).
  1. Subcontracting

The Contractor:

* + 1. must not, without the prior written approval of the Contract Administrator, subcontract any work specified in the Contract Particulars except to a subcontractor specified in the Contract Particulars;
    2. will:
       1. not be relieved of any of its liabilities or obligations under the Contract; and
       2. remain responsible for all subcontractors and for all work which is or may be subcontracted, as if it was itself executing the work, whether or not any subcontractors default or otherwise fail to observe any of the requirements of the relevant subcontract;
    3. will be vicariously liable to the Commonwealth for all acts, omissions and defaults of its subcontractors (and those of the employees and agents of its subcontractors) relating to, or in any way connected with, the Contractor's Activities;
    4. must ensure that all subcontract documentation is prepared and all procurement processes for subcontractors are conducted:
       1. with the highest standards of probity, fairness and equal opportunity; and
       2. in accordance with all other Statutory Requirements;
    5. must use its best endeavours to ensure that each subcontract contains provisions:
       1. which bind the subcontractor to participate in any novation required by the Commonwealth under clause 14.5(a)(ii); and
       2. as otherwise required by the Contract;
    6. must, unless otherwise agreed in writing by the Contract Administrator:
       1. execute;
       2. procure the relevant subcontractor to execute; and
       3. deliver to the Contract Administrator,

a Subcontractor Deed of Covenant or Consultant Deed of Covenant, duly completed with all relevant particulars:

* + - 1. as a condition precedent to seeking the prior written approval of the Contract Administrator under paragraph (a); or
      2. when such approval is not required, within the time required by the Contract Administrator and in any event before commencement of work by the relevant subcontractor; and
    1. must obtain and hold satisfactory and valid STRs of any subcontractor 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 (g), a reference to “satisfactory” and “valid” has the meaning given in clause 18.6(f).

No Subcontractor Deed of Covenant or Consultant Deed of Covenant will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.

* 1. Collateral Warranties
     1. The Contractor must, as a condition precedent to Completion of the Works or a Stage specified in the Contract Particulars, procure and provide the Commonwealth with the warranties specified in the Contract Particulars:
        1. from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty;
        2. in the form of the Collateral Warranty; and
        3. for the minimum warranty periods stated in the Contract Particulars.
     2. No Collateral Warranty will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.
     3. If the Contractor is unable to or fails for any reason to provide any Collateral Warranty required by the Contract:
        1. the Contractor is deemed to have provided the Collateral Warranty itself on like terms;
        2. the Commonwealth 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 purpose of subparagraph (ii), the Contractor irrevocably appoints the Commonwealth as its lawful attorney to execute any instrument necessary to give effect to the assignment.
     4. No assignment under clause 8.6 will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.
  2. Provisional Sum Work

Clauses 8.7 to 8.12 do not apply unless the Contract Particulars state that they apply.

* + 1. In the Delivery Phase, for each item of Provisional Sum Work, the Contract Administrator will give the Contractor an instruction either deleting the item of Provisional Sum Work from the Contract or requiring the Contractor to proceed with the item of Provisional Sum Work.
    2. If an item of Provisional Sum Work is deleted from the Contract:
       1. the Delivery Phase Price will be reduced by the amount allowed for the item of Provisional Sum Work specified in the Contract Particulars;
       2. the Commonwealth may engage an Other Contractor to carry out the item of Provisional Sum Work; and
       3. to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the deletion of the item of Provisional Sum Work.
  1. Design for Provisional Sum Work to be Prepared by Commonwealth - Option 1
     1. If the Contractor is instructed to proceed with an item of Provisional Sum Work, the Commonwealth's designers will progressively prepare the Design Documentation for the item of Provisional Sum Work.
     2. The Contractor must attend such design and other meetings as required by the Contract Administrator to assist these designers in preparing the Design Documentation for the Provisional Sum Work and to advise upon:
        1. buildability issues and the choice of materials to be incorporated in the Works; and
        2. the sufficiency and completeness of the Design Documentation.

8.8 Design for Provisional Sum Work to be Prepared by Contractor - Option 2

* + 1. If the Contractor is instructed to proceed with an item of Provisional Sum Work, the Contractor will progressively prepare the Design Documentation for the item of Provisional Sum Work.
    2. The Contractor must inform the Contract Administrator when the Design Documentation is being discussed at design and other meetings and the Contract Administrator may attend all such meetings.
  1. Tendering Provisional Sum Work

Where the Contractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Contract Administrator, be carried out under subcontracts entered into by the Contractor as follows:

* + 1. after the Design Documentation for the item of Provisional Sum Work has been prepared (and, if prepared by the Contractor, is in accordance with the requirements of the Contract and the Contractor is entitled to use it for construction purposes under clause 6.3), or the Contractor is otherwise instructed to proceed with the item of Provisional Sum Work, the Contractor must invite tenders:
       1. from at least 3 persons as either specified in the Contract Particulars or proposed by the Contractor and approved by the Contract Administrator; and
       2. on the terms of a subcontract containing similar terms to the Contract and approved by the Contract Administrator (for that purpose, each form of subcontract specified in the Contract Particulars is approved);
    2. the Contractor must give the Contract Administrator such details of each tender as the Contract Administrator may require;
    3. the Contractor must recommend to the Contract Administrator which tender it believes should be accepted and, if the tender is not the lowest priced tender, it must give reasons why the lowest priced tender is not recommended; and
    4. the Contractor must then enter into a subcontract with a tenderer as instructed by the Contract Administrator.
  1. Delivery Phase Price Adjustment for Tendered Provisional Sum Work

After the Contractor is instructed to enter into a subcontract for an item of Provisional Sum Work under clause 8.9:

* + 1. the Delivery Phase Price will, if the amount tendered by the tenderer with whom the Contractor is instructed to enter into the subcontract is more or less than the amount specified in the Contract Particulars for that item of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit except as set out in clause 8.12; and
    2. any Variation to that work will be dealt with under clause 11.
  1. Delivery Phase Price Adjustment for Other Provisional Sum Work

If the Contract Administrator directs that an item of Provisional Sum Work is not to be tendered under clause 8.9, the Delivery Phase Price will be adjusted for the item of Provisional Sum Work by the difference between:

* + 1. the amount specified in the Contract Particulars for that item of Provisional Sum Work; and
    2. either:
       1. an amount agreed by the parties; or
       2. failing agreement, an amount determined by the Contract Administrator under clause 11.3(b) or 11.3(c)(ii) as if the item of Provisional Sum Work were a Variation.
  1. Further Allowance for Provisional Sum Work

If, after each and every item of Provisional Sum Work has been deleted from the Contract under clause 8.7, tendered under clause 8.9 or priced under clause 8.11, the total net increase to the Delivery Phase Price after all adjustments under clauses 8.7, 8.10 and 8.11 exceeds the percentage specified in the Contract Particulars of the total amount specified for Provisional Sum Work, the Delivery Phase Price will be further increased by the percentage specified in the Contract Particulars of the amount by which the total net increase to the Delivery Phase Price exceeds the percentage specified in the Contract Particulars of the total amount specified in the Contract Particulars for Provisional Sum Work.

* 1. Co-operation with Other Contractors

Without limiting clause 8.17(a)(ii), the Contractor must:

* + 1. permit Other Contractors to carry out their work;
    2. fully co-operate with Other Contractors;
    3. carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
    4. carry out the Contractor's Activities so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors.
  1. Setting Out

The Contractor must:

* + 1. set out the Works in accordance with the requirements of the Contract; and
    2. carry out any survey which may be necessary for this purpose.
  1. Survey

The Contractor must, as a condition precedent to Completion of the Works or a Stage specified in the Contract Particulars, submit to the Contract Administrator a certificate signed by a licensed surveyor stating that:

* + 1. the whole of the Works or the Stage are within any particular boundaries stipulated in the Contract except to the extent that the Works or Stage are specifically required by the Contract to be outside those boundaries; and
    2. if required by the Works Description, structural elements of the Works or the Stage are within the tolerances specified.
  1. Safety and First Aid
     1. The Contractor must carry out the Contractor's Activities:
        1. safely and in a manner that does not put the health and safety of persons at risk; and
        2. in a manner that protects property.
     2. If the Contract Administrator reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Works, the Contract Administrator may direct the Contractor to change its manner of working or to cease working.
     3. Without limiting clause 8.17, the Contractor must ensure that:
        1. it adopts a proactive commitment to the resourcing, quality and delivery of on Site first aid and emergency life support for all persons engaged in, or affected by, the carrying out of the Contractor's Activities and the Works;
        2. it complies with all Statutory Requirements (including the WHS Legislation and any Codes of Practice issued under the WHS Legislation as if they applied to the Contractor) and best practice procedures in respect of the availability, quality and delivery at the Site of first aid and emergency life support, including in respect of the:
           1. training and accreditation of any on Site personnel, which the Contractor must ensure is provided by an Australian registered training organisation or equivalent approved by the Contract Administrator; and
           2. provision of appropriate and adequate first aid equipment and facilities; and
        3. without limiting subparagraphs (i) and (ii):
           1. there are present on Site at all times during the carrying out of the Contractor's Activities and the Works on Site a sufficient number of adequately trained and accredited personnel so as to ensure compliance with its obligations under this paragraph (c), such number to be not less than the higher of:

the number of personnel prescribed by Statutory Requirements; and

10% of the personnel present on the Site and engaged in connection with the Contractor’s Activities on any given day; and

* + - * 1. it implements procedures and strategies for maximising the capability development, education and training of local Host Nation residents in respect of the provision of first aid and emergency life support training.
  1. Work Health and Safety

The Contractor must:

* + 1. ensure that in carrying out the Contractor's Activities, so far as is reasonably practicable, it complies with:
       1. all Statutory Requirements and other requirements of the Contract in respect of work health and safety;
       2. 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;
       3. 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
       4. the duty under the WHS Legislation, where a notifiable incident has occurred, to ensure 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:
          1. it is to assist an injured person or remove a deceased person;
          2. it is to make the area safe or to minimise the risk of a further notifiable incident; or
          3. the relevant regulator/inspector has given permission to disturb the site;

as if the WHS Legislation applied to the Contractor;

* + 1. comply with any Statutory Requirements of the Host Nation concerning work health and safety in delivering the Works and performing the Contractor's Activities, provided in the event there is a conflict between the standard prescribed by Statutory Requirements of the Host Nation concerning work health and safety and any Statutory Requirements of Australia concerning work health and safety, the Statutory Requirements of Australia shall prevail;
    2. without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, notify the Contract Administrator in respect of:
       1. notifiable incidents within the meaning of the WHS Legislation, immediately upon becoming aware of the notifiable incident;
       2. 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. all other 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 subparagraphs (i) or (ii)), in the reports under clause 3.10;
    3. for the purposes of paragraphs (a)(iii) and (c) above, in respect of any notifiable incident:
       1. immediately provide the Contract Administrator with a copy of the notice required to be provided to the relevant Host Nation regulator; and
       2. promptly provide the Contract Administrator with copies of:
          1. all witness statements and the investigation report relating to the notifiable incident; and
          2. any notice(s) or other documentation issued by the relevant Host Nation regulator; and
       3. within 10 days of the date of notification to the relevant Host Nation, 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;
    4. without limiting the Contractor's obligations under the Contract (including paragraph (d) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contract Administrator or anyone else acting on behalf of the Commonwealth, 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 Commonwealth to enable the Commonwealth to comply with its obligations under the WHS Legislation;
    5. if requested by the Contract Administrator, use its best endeavours to 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;
    6. use its best endeavours to provide the written assurances obtained under paragraph (f) to the Contract Administrator in accordance with paragraph (f);
    7. use its best endeavours to ensure that all subcontracts include provisions equivalent to the obligations of the Contractor in this clause 8.17;
    8. ensure that, if any Host Nation Statutory Requirement requires that:
       1. a person:
          1. be authorised or licensed to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
          2. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience, that person has the required qualifications or experience or is so supervised; or
       2. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
    9. 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 (i) are met;
    10. if requested by the Contract Administrator 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;
    11. ensure that any design prepared by the Contractor under clause 6.2 eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure and provide upon request such information and documentation (including analysis, testing and calculations) regarding the design as required by the Contract Administrator;
    12. not use Asbestos or ACM in carrying out the Contractor's Activities;
    13. not use, install or incorporate Asbestos or ACM into the Works; and
    14. upon request by the Contract Administrator, 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 any applicable Statutory Requirements in relation to Asbestos and ACM in carrying out the Contractor's Activities and the Works.
  1. Plant, Equipment and Work

The Contractor must not remove from the Site any Plant, Equipment and Work without the Contract Administrator's prior written approval except for the purpose of achieving Completion as contemplated under clause 8.19(b).

* 1. Cleaning Up

The Contractor must:

* + 1. in carrying out the Contractor's Activities, keep the Site and the Works clean and tidy and free of refuse; and
    2. as a condition precedent to Completion, remove all rubbish, materials and Plant, Equipment and Work from the part of Site relevant to the Works or the Stage.
  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 or contribute to 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 clause 8.20;
          2. any breach of a 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 clause 8.20; 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 or the Works, whether or not it has complied with all Statutory Requirements and other requirements of the Contract for the protection of the Environment.
  1. Urgent Protection

The Commonwealth 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, which the Contractor must take but does not take.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth in taking such action will be a debt due from the Contractor to the Commonwealth.

* 1. Valuable, Archaeological or Special Interest Items
     1. Any valuable, archaeological or special interest items found on or in the Site will, as between the parties, be the property of the Commonwealth.
     2. Where such an item is found on or in the Site, the Contractor must:
        1. immediately give the Contract Administrator and the Commonwealth notice in writing;
        2. not disturb the item under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and
        3. ensure that the item is protected until the nature of the item has been competently determined.
     3. The Contract Administrator must, within 14 days of receipt of a notice under paragraph (b)(i), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the finding of the item.
     4. The Contractor will be entitled, where the item is found during the Delivery Phase, to: 
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.7; and
        2. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (b)(i) which arise directly from the finding of the item and the Contract Administrator's instruction under paragraph (c), as determined by the Contract Administrator.
     5. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the finding of the item or the Contract Administrator's instruction under paragraph (c), other than under paragraph (d).
  2. The Commonwealth May Act

Provided that the Contract Administrator has given the Contractor prior reasonable written notice of the Commonwealth's intention to exercise its rights under this clause 8.23, the Commonwealth may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth in so carrying out such a Contract obligation will be a debt due from the Contractor to the Commonwealth.

* 1. Access Hours

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

* 1. Salvaged Materials

Subject to and without limiting clause 8.22:

* + 1. 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; and
    2. the Contractor must provide written notice to the Contract Administrator on each occasion that it salvages materials, plant, equipment, fixtures or other things from the Site or from the Works.
  1. Contract Administrator's Office
     1. The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site during the Delivery Phase, provide and erect on the Site, where directed by the Contract Administrator, the temporary office and associated facilities and services specified in the Contract Particulars for the sole use of the Contract Administrator and the Contract Administrator's representatives.
     2. The Contract Administrator's Office will remain the property of the Contractor.
     3. Without limiting paragraph (a), the Contractor must:
        1. carry out all installations and connections necessary to provide lighting, heating, air conditioning and a separate telephone line to the Contract Administrator's Office;
        2. install all lighting, heating, air conditioning and telephones in the Contract Administrator's Office as directed by the Contract Administrator;
        3. maintain the Contract Administrator's Office until the last Date of Completion, including all necessary cleaning and maintenance;
        4. pay all costs of installation, consumption, rental and removal of all lighting, heating, air conditioning and telephone services in the Contract Administrator's Office (excluding the cost of telephone calls which are to be paid by the Contract Administrator); and
        5. remove the Contract Administrator's Office from the Site within 7 days of the last Date of Completion.
  2. Project Signboards
     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; and
        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); and
           8. any additional information:

specified in the Contract Particulars; or

required by the Contract Administrator.

* + 1. The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site during the Delivery Phase, submit the proposed location, layout and content of the project signboards to the Contract Administrator for approval.
    2. 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 8.14:

* + 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 Works Description (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. to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by clause 8.28.
  1. Local Industry
     1. The Contractor must, without derogating from its obligations under clauses 9.2 and 19.2, use its best endeavours to maximise:
        1. the purchase of goods and services from Australian suppliers and suppliers resident in the Host Nation, provided such goods and services are available in a timely manner, at a suitable price, and are of the standard required by the Contract; and
        2. involvement of Australian industry and the Host Nation's local industry, including employment of local residents, where available and sufficiently qualified,

in carrying out the Contractor's Activities.

* + 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 compliance with its obligations under this clause 8.29 then the Contract Administrator may direct the Contractor to provide additional detail, at its cost, in relation to its compliance with this clause 8.29 and the steps that the Contractor will take to ensure such compliance.
    2. The Contractor:
       1. must comply with all directions issued by the Contract Administrator in relation to the Contractor's compliance with this clause 8.29; 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).
  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 Commonwealth 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. in the Delivery Phase, 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 10.7; and
           2. have the Delivery Phase 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. in the Delivery Phase, subject to paragraph (f), the Delivery Phase 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 9.2.
     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 8.30; and
        2. without limiting subparagraph (i), the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim 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 (acting reasonably):
        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 Commonwealth 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 Commonwealth 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 or in accordance with clause 2.6; and
           2. the Local Industry Capability Plan and Pandemic Management Plan as finalised under clause 9.2.

1. QUALITY
   1. Workmanship, Materials and Other Requirements

The Contractor must in carrying out the Contractor's Activities:

* + 1. use workmanship:
       1. of:
          1. the standard prescribed in the Contract; or
          2. to the extent it is not so prescribed, a high standard; and
       2. which is fit for its purpose;
    2. use materials:
       1. which:
          1. comply with the requirements of the Contract; or
          2. if not fully described in the Contract, are new and of a high standard; and
       2. of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Works; and
    3. comply with the requirements of the Contract.
  1. 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 Project Plans based:

where applicable, on the draft Project Plans lodged by the Contractor in its tender for the Contractor's Activities;

to the extent not inconsistent with the requirements of the Contract, on the approach set out in the Methodology Statement; 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 specified in the Contract Particulars after the Award Date for each Project Plan;

* + - * 1. not commence any of the Contractor's Activities to which any Project Plan applies, unless the Contract Administrator has had the number of days specified in the Contract Particulars for each Project Plan to review the Project Plan and has not rejected the Project Plan;
        2. if any Project Plan is rejected, submit an amended Project Plan to the Contract Administrator;
        3. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event in accordance with the requirements of the Contract to the satisfaction of the Contract Administrator;
        4. after each Project Plan has been finalised:

regularly review, update and amend each Project Plan in accordance with the process set out in each Project Plan and otherwise at least:

on each anniversary of the Award Date; and

prior to the Date for Delivery Phase Approval;

update or amend a Project Plan on request of the Contract Administrator; and

continue to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Contractor),

and submit an updated or amended Project Plan to the Contract Administrator, after which:

the Contractor must continue to comply with the requirements of the then current Project Plan until the process in subparagraph (ii) has been completed in respect of the updated or amended Project Plan; and

subsubparagraphs B - E will apply (to the extent applicable); and

* + - * 1. document and maintain detailed records of all:

reviews, updates, amendments and submissions of each Project Plan;

audits or other monitoring of each Project Plan; and

training and awareness programs and communications provided to Contractor and subcontractor personnel in respect of each Project Plan (including each updated or amended Project Plan).

* + 1. The Contractor 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 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 or anyone else acting on behalf of the Commonwealth 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 Commonwealth, to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contract Administrator or other person.
  1. Contract Administrator's Right to Inspect

The Contract Administrator may at any time inspect the Contractor's Activities or the Works.

The Contractor acknowledges and agrees that:

* + 1. the Contract Administrator owes no duty to the Contractor to:
       1. inspect the Contractor's Activities or the Works; or
       2. review construction for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
    2. no inspection of the Contractor's Activities or the Works or review of construction by the Contract Administrator will in any way lessen or otherwise affect:
       1. the Contractor's obligations under the Contract or otherwise at law or in equity; or
       2. the Commonwealth's rights against the Contractor under the Contract or otherwise at law or in equity.
  1. Inspections and Tests
     1. The Contractor must carry out all inspections and tests required by the Contract or directed by the Contract Administrator.
     2. All inspections and tests are to be carried out in accordance with the procedure:
        1. specified in the Contract; or
        2. if no procedure exists, as reasonably directed by the Contract Administrator.
  2. Costs of Inspections and Tests

If:

* + 1. the Contract Administrator directs the Contractor to carry out an inspection or test which:
       1. is not otherwise required by the Contract; or
       2. does not relate to a Defect in respect of which the Contract Administrator gave an instruction under clause 9.6; and
    2. the results of the inspection or test show the work is in accordance with the Contract,

the Contractor will be entitled to have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the inspection or test, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the inspection or test, other than under this clause 9.5.

* 1. Defects

Subject to paragraphs (b) and (c), the Contractor must correct all Defects.

If, prior to the expiration of the Defects Liability Period for the Works or a Stage, the Contract Administrator discovers or believes there is a Defect, the Contract Administrator may give the Contractor an instruction specifying the Defect and doing one or more of the following:

* + 1. requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur;
    2. requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
    3. advising the Contractor that the Commonwealth will accept the work, or any part of it, despite the Defect.
  1. Correction of Defect or Variation
     1. If an instruction is given under clause 9.6(a) or (b), the Contractor must correct the Defect or carry out the Variation:
        1. within the time specified in the Contract Administrator's instruction; and
        2. if after Completion, at times and in a manner which cause as little inconvenience to the occupants of the Works or the Stage as is reasonably possible.
     2. If the Contractor fails to comply with paragraph (a), the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) itself engage an Other Contractor to correct the Defect and the cost of such correction will be a debt due from the Contractor to the Commonwealth.
  2. Claim for Correction of Defect

Where an instruction is given under clause 9.6(a) and clause 9.7(b) does not apply:

* + 1. the Contractor will only be entitled to make a Claim for correcting the Defect (or the relevant part) if the Defect (or the relevant part) is something for which the Contractor is not responsible; and
    2. where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect will be treated as if it were a Variation the subject of a direction by the Contract Administrator and clause 11.3 applied.
  1. Claim for Variation

Where a Variation has been instructed under clause 9.6(b) and:

* + 1. the Contractor is not responsible for the Defect (or the relevant part) the:
       1. Delivery Phase Price will be adjusted in accordance with clause 11.3; and
       2. Contractor will be entitled to an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.7; or
    2. the Contractor is responsible for the Defect (or the relevant part):
       1. the Contract Administrator will determine the:
          1. value of the Variation in accordance with clause 11.3; and
          2. cost of correcting the Defect (or the relevant part) as if clause 9.8(b) applied;
       2. the Delivery Phase Price will be adjusted by the difference between the valuations under subparagraph (i) as follows:
          1. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Delivery Phase Price will be increased by the excess; or
          2. if the value under subparagraph (i)B is greater than the cost under subparagraph (i)A, the Delivery Phase Price will be decreased by the difference and will be a debt due from the Contractor to the Commonwealth; and
       3. the Contractor will not be entitled to claim an extension of time to any Date for Completion.
  1. Acceptance of Work

If:

* + 1. an instruction is given under clause 9.6(c) prior to the expiration of the Defects Liability Period; and
    2. the Contractor is responsible for the Defect (or the relevant part),

the amount determined by the Contract Administrator which represents the cost of correcting the Defect (or the relevant part) will be a debt due from the Contractor to the Commonwealth.

* 1. Extension of Defects Liability Period

If:

* + 1. the Contract Administrator gives the Contractor an instruction under clause 9.6(a) or (b) during the Defects Liability Period; and
    2. the Contractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the instruction by the period set out in the Contract Particulars, commencing upon completion of the correction of the Defect (or the relevant part) or completion of the Variation.

* 1. Common Law Rights not Affected

Neither the Commonwealth's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

* + 1. the rights conferred upon the Commonwealth or Contract Administrator by clause 9 or any other provision of the Contract;
    2. the failure by the Commonwealth or the Contract Administrator to exercise any such rights; or
    3. any instruction of the Contract Administrator under clause 9.6.
  1. Maintenance During Defects Liability Period

The Contractor must ensure that during the Defects Liability Period for the Works or each Stage such planned and unplanned maintenance is carried out:

* + 1. as required by the Works Description; and
    2. otherwise in accordance with the Project Lifecycle and HOTO Plan.
  1. Commissioning, Training and HOTO Process

Without limiting clause 8.17(a)(ii), the Contractor must:

* + 1. fully co-operate with the Contract Administrator, the Commonwealth and Other Contractors and take all steps necessary to ensure the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
    2. without limiting paragraph (a):
       1. carry out all Contractor HOTO Obligations;
       2. ensure that all Contractor HOTO Obligations are carried out within any applicable timeframe prescribed by, or determined in accordance with, the HOTO Plan and Checklist and the other requirements of the Contract;
       3. comply with all commissioning, training and handover requirements described in the Contract, including the requirements in Annexure 1;
       4. as and when required by the Contract Administrator, provide the Commonwealth and such other persons as nominated in writing by the Contract Administrator (including the Host Nation) with such other specific assistance as may be required by the Contract Administrator to facilitate the timely, efficient, comprehensive and smooth completion of the HOTO Process, including providing the occupants with any training required to operate and maintain the Works or the Stage;
       5. as a condition precedent to Completion, hand to the Contract Administrator or other persons nominated by the Contract Administrator all Project Documents which are required for the use, operation and maintenance of the Works or the relevant Stage; and
       6. as and when required by the Contract Administrator, meet with the Contract Administrator, the Commonwealth and such other persons as are nominated by the Contract Administrator (including the Host Nation and Other Contractors) for the purpose of ensuring that the Contract Administrator, the Commonwealth and the nominated persons have sufficient information to enable the Contract Administrator, the Commonwealth and the nominated persons (as the case may be) to:
          1. occupy, use, operate and maintain the Works or the Stage; and
          2. perform such other activities as may be required by the Commonwealth in respect of the Works or the Stage.
  1. Defects Records and Reports
     1. Without limiting clause 9.6, the Contractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects.
     2. The Contractor must provide a report to the Contract Administrator in a form satisfactory to the Contract Administrator:
        1. before the Date of Completion:
           1. with its reports under clause 3.10; and
           2. as a condition precedent to Completion; and
        2. after the Date of Completion:
           1. with its reports under clause 3.10; and
           2. within 14 days after the end of the Defects Liability Period,

which sets out:

* + - 1. details of all calls, attendances, recommendations and actions taken in respect of each Defect;
      2. recommendations for the future maintenance of the Works;
      3. any work health and safety matters; and
      4. any other matters specified in the Contract Particulars or required by the Contract Administrator.
  1. Quality Assurance

The Contractor:

* + 1. must implement a quality assurance process, system or framework consistent with best industry practice;
    2. without limiting clause 6.12, must allow the Contract Administrator or anyone else acting on behalf of the Commonwealth 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 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 Commonwealth 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 Commonwealth, 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. TIME
   1. Progress and Time for Completion

The Contractor must:

* + 1. regularly and diligently progress the Contractor's Activities; and
    2. achieve Completion of the Works or each Stage by the relevant Date for Completion.
  1. Programming
     1. The Contractor must:
        1. update:
           1. in the Planning Phase, the Planning Phase Program; and
           2. in the Delivery Phase, the Delivery Phase Program,

periodically, at least at intervals of no less than that specified in the Contract Particulars, to record and take account of:

* + - * 1. actual progress of the Contractor's Activities to the date which is two working days prior to the date on which the update is provided;
        2. changes to the program; and
        3. delays which may have occurred, or which are likely to occur including, in the Delivery Phase, any for which the Contractor is granted an extension of time under clause 10.8;
      1. ensure all programs contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
      2. give the Contract Administrator copies of all programs; and
      3. provide all programs in a format compatible with the software and any methodology specified in the Contract Particulars.
    1. The Contract Administrator may review and comment on any program given under this clause 10.2.
    2. The Contract Administrator may instruct the Contractor to change the order in which the Contractor's Activities are to be carried out. If such an instruction is issued in the Delivery Phase, 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 10.7; and
       2. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor which arise directly from such instruction, as determined by the Contract Administrator.
  1. Contractor Not Relieved

Any review of, comment upon, or any failure to review or comment upon, a Planning Phase Program or Delivery Phase 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 of the Works or each Stage by the relevant Date for Completion;
    2. evidence or constitute the granting of an extension of time or an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any or all of the Contractor's Activities; or
    3. affect the time for the carrying out of the Commonwealth's or Contract Administrator's Contract obligations.
  1. Acceleration by Contractor

If the Contractor chooses to accelerate progress then despite clause 3.3:

* + 1. neither the Commonwealth nor the Contract Administrator will be obliged to take any action to assist or enable the Contractor to achieve Completion of the Works or each Stage before any Date for Completion; and
    2. the time for the carrying out of the Commonwealth's or the Contract Administrator's obligations will not be affected.
  1. Delays, Including Delays Entitling Claim for Extension of Time
     1. If the Contractor becomes aware of any occurrence that is likely to delay it in carrying out the Contractor's Activities it must, as soon as practicable, and in any event within 14 days of becoming aware, inform the Contract Administrator in writing of the occurrence and the likely delay.
     2. If the Contractor has been delayed in carrying out the Contractor's Activities:
        1. after the Date of Delivery Phase Approval and prior to the Date for Completion of the Works or a Stage, by an Act of Prevention or a cause specified in the Contract Particulars in a manner which has delayed, or is likely to delay, the Contractor in achieving Completion of the Works or the Stage; or
        2. after the Date for Completion of the Works or a Stage, by an Act of Prevention in a manner which has delayed, or is likely to delay, the Contractor in achieving Completion of the Works or the Stage,

the Contractor may claim an extension of time.

* 1. Claim for Extension of Time

To claim an extension of time the Contractor must:

* + 1. not later than 28 days after the commencement of the delay to the carrying out of the Contractor's Activities, submit a written claim to the Contract Administrator for an extension to the relevant Date for Completion which:
       1. gives detailed particulars of the delay and the occurrence causing the delay; and
       2. states the number (not exceeding 28) of days extension of time claimed together with the basis of calculating that period, including evidence that it has been, or is likely to be, delayed in achieving Completion in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii); and
    2. if the delay to the carrying out of the Contractor's Activities continues beyond 28 days from the commencement of that delay, and the Contractor wishes to claim an extension of time in respect of any further period, submit a further written claim to the Contract Administrator:
       1. every 28 days after the last date for submitting the first written claim, provided however that the final written claim must be submitted not later than 7 days after the end of the delay to the carrying out of the Contractor's Activities; and
       2. containing the information required by paragraph (a).
  1. Conditions Precedent to Extension

Subject to clause 10.13, it is a condition precedent to the Contractor's entitlement to an extension of time that the:

* + 1. Contractor gives the written claim required by clause 10.6 as required by that clause;
    2. cause of the delay to the Contractor's Activities was beyond the reasonable control of the Contractor;
    3. Contractor must have actually been, or be likely to be, delayed in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii); and
    4. Contractor must not have been given an instruction under clause 10.12.
  1. Extension of Time
     1. If the conditions precedent in clause 10.7 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Commonwealth and the Contractor within 21 days of the Contractor's written claim under clause 10.6(a) or (b) (as applicable).
     2. In determining a reasonable period under paragraph (a), the Contract Administrator must not include any period of delay in respect of which the Contractor:
        1. contributed to the delay; or
        2. failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the extent of the delay.
  2. Unilateral Extension of Time
     1. Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under clause 10, the Commonwealth may (in its absolute discretion) at any time and from time to time by written notice to the Contractor and the Contract Administrator, unilaterally extend any Date for Completion.
     2. The Contractor acknowledges that:
        1. the Commonwealth is not required to exercise the Commonwealth's discretion under clause 10.9 for the benefit of the Contractor;
        2. clause 10.9 does not give the Contractor any rights; and
        3. the exercise or failure to exercise the Commonwealth's discretion under clause 10.9 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.
  3. Delay Damages
     1. Clause 10.10 applies unless the Contract Particulars state that it does not apply.
     2. In the Delivery Phase, the Contractor will be entitled to be paid the extra costs reasonably incurred by the Contractor up to the maximum daily amount specified in the Contract Particulars for each day by which the Date for Completion of the Works or a Stage is extended due to:
        1. a breach of the Contract by the Commonwealth; or
        2. an event specified in the Contract Particulars.
     3. The amount determined under this clause 10.10 will be a limitation upon the Commonwealth's liability to the Contractor for any delay or disruption which:
        1. the Contractor encounters in carrying out the Contractor's Activities; and
        2. arises out of or in connection with, the breach of the Contract by the Commonwealth or an event specified in the Contract Particulars,

and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any such delay or disruption, other than under clause 10.8 or clause 10.10.

* 1. Suspension
     1. The Contract Administrator:
        1. may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities; and
        2. is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Contractor.
     2. If a suspension under clause 10.11 arises as a result of:
        1. the Contractor's failure to carry out its obligations in accordance with the Contract, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the suspension; or
        2. a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract, an instruction to suspend under clause 10.11 will, where the suspension occurs during the Delivery Phase, entitle the Contractor to: 
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.7; and
           2. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the suspension, other than under paragraph (b)(ii).

* + 1. The Contractor may only suspend the Contractor's Activities when instructed to do so under clause 10.11.
  1. Instruction to Accelerate

If the Contractor gives the Contract Administrator a written claim under clause 10.6, the Contract Administrator may:

* + 1. instruct the Contractor to accelerate the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Completion of the Works or the Stage by the relevant Date for Completion; and
    2. give such an instruction whether or not the cause of delay for which the Contractor has given its written claim under clause 10.6 otherwise entitles the Contractor to an extension of time to any relevant Date for Completion.
  1. Partial Acceleration

If the Contract Administrator gives the Contractor an instruction to accelerate under clause 10.12 requiring it to accelerate the Contractor's Activities and it only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.

* 1. Acceleration

If the Contract Administrator gives an instruction to the Contractor under clause 10.12:

* + 1. the Contractor must accelerate the Contractor's Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Completion of the Works or the Stage by the relevant Date for Completion; and
    2. if the Contractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay, the Contractor will be entitled to be paid:
       1. the extra costs reasonably incurred by the Contractor as a direct result of accelerating the Contractor's Activities; and
       2. that percentage of the amount under subparagraph (i) specified in the Contract Particulars; and

subject to clause 10.13, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the cause of the delay or the instruction under clause 10.12, other than under paragraph (b).

* 1. Commonwealth's Rights to Liquidated Damages Not Affected

The Commonwealth's rights to liquidated damages under clause 13.7 for a failure by the Contractor to achieve Completion of the Works or a Stage by any relevant Date for Completion are not affected by the Contract Administrator giving the Contractor an instruction to accelerate under clause 10.12.

* 1. Force Majeure

This clause 10.16 only applies if the Contract Particulars state that it applies.

* + 1. If a party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it must give written notice to the other party of the event or circumstance constituting the Force Majeure within 14 days after the party becomes aware, or should have become aware of the event or circumstance, and shall specify the obligations, the performance of which is or will be prevented.
    2. Each party must at all times take all reasonable steps to minimise delay in the performance of the Contract as a result of Force Majeure.
    3. A party must give notice to the other party when it ceases to be affected by the Force Majeure.
    4. If a Force Majeure of which notice has been given under paragraph (a), continues for a period of more than 2 months, the Commonwealth may by written notice to the Contractor immediately terminate the Contract whereupon clause 14.8 will apply.
    5. If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure in the Delivery Phase, 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 10.7; and
       2. have the Delivery Phase 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 Force Majeure.
    6. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Force Majeure, other than under paragraph (e).

1. VARIATIONS
   1. Variation Price Request
      1. At any time during:
         1. the Planning Phase; or
         2. the Delivery Phase prior to the Date of Completion (but without limiting clauses 5.3 and 9.6),

the Contract Administrator may issue a document titled "**Variation Price Request**" to the Contractor which will set out details of a proposed Variation which the Commonwealth is considering.

* + 1. The Contractor must immediately take all action required under any relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Variation.
    2. Within 14 days of the receipt of a Variation Price Request (or such longer period as may be agreed by the Contract Administrator) the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out the:
       1. adjustment (if any) to:
          1. in the case of a Planning Phase Material Variation, the Planning Phase Price to carry out the proposed Variation; and
          2. in any other case, the Delivery Phase Price to carry out the proposed Variation; and
       2. effect (if any) which the proposed Variation will have on the then current Planning Phase Program or Delivery Phase Program (as applicable), including each Date for Completion.
  1. Variation Order

Whether or not the Contract Administrator has issued a Variation Price Request under clause 11.1, at any time during:

* + 1. the Planning Phase; or
    2. the Delivery Phase prior to the Date of Completion (but without limiting clauses 5.3 and 9.6),

the Contract Administrator may instruct 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 set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly;
    2. any adjustment to the Contract Price will be determined under clauses 11.3(b) and 11.3(c); or
    3. the Variation is to be carried out as daywork and any adjustment to the Contract Price will be determined under clause 11.3(d).

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

* 1. Valuation of Variation

Subject to clauses 9.9(b) and 11.9, the Contract Price will be increased or decreased for all Variations which have been the subject of a direction by the Contract Administrator:

* + 1. as agreed under clause 11.2(c);
    2. if paragraph (a) does not apply, in accordance with the rates and prices included in the Table of Variation Rates and Prices, if and insofar as the Contract Administrator determines that those rates and prices are applicable to or it is reasonable to use them for valuing, the Variation, to which, if the Variation is to the Works in the Delivery Phase, the following will be added:
       1. the following percentage or percentages of the amount determined:
          1. where the adjustment to the Delivery Phase Price is to be an increase, the percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
          2. where the adjustment to the Delivery Phase Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
       2. any reasonable costs incurred by the Contractor as a direct result of the Variation delaying the Contractor;
    3. to the extent paragraph (b) does not apply, by a reasonable amount:
       1. to be agreed between the parties; or
       2. failing agreement, determined by the Contract Administrator,

to which, if the Variation is to the Works in the Delivery Phase, the following will be added:

* + - 1. the following percentage or percentages of the amount determined:
         1. where the adjustment to the Delivery Phase Price is to be an increase, the percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
         2. where the adjustment to the Delivery Phase Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
      2. any reasonable costs incurred by the Contractor as a direct result of the Variation delaying the Contractor; or
    1. if the Variation is to the Works in the Delivery Phase, by the amount determined by the Contract Administrator under clause 11.6.
  1. Omissions

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

* 1. Daywork

If the Contractor is given an instruction under clause 11.2(e) to carry out work as daywork, the Contractor must:

* + 1. carry out the daywork in an efficient manner; and
    2. after the instruction, provide the Contract Administrator with a written report each day signed by the Contractor which:
       1. records particulars of all resources used by the Contractor for the execution of the daywork; and
       2. includes the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the daywork.

The Contract Administrator may direct the manner in which such matters are to be recorded.

* 1. Valuation of Daywork

In determining the value of work which the Contract Administrator instructed was to be carried out as daywork, the Contract Administrator will have regard to:

* + 1. the amount of wages and allowances paid or payable by the Contractor at:
       1. the rates pertaining at the Site at the time as established by the Contractor to the reasonable satisfaction of the Contract Administrator; or
       2. other reasonable rates approved by the Contract Administrator;
    2. the percentage specified in the Contract Particulars of the wages paid or payable under paragraph (a);
    3. the amount of hire charges in respect of plant approved by the Contract Administrator for use on the work in accordance with the hiring rates and conditions:
       1. agreed between the Contract Administrator and the Contractor; or
       2. failing agreement, reasonably determined by the Contract Administrator;
    4. the reasonable amounts paid for services, subcontracts and professional fees; and
    5. the actual cost to the Contractor at the Site of all materials supplied and required for the work,

to which will be added:

* + 1. the percentages of the amounts determined under paragraphs (a) - (e) specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; and
    2. the reasonable costs incurred by the Contractor as a direct result of the Variation delaying the Contractor.
  1. Contractor Variation Request

The Contractor may, for its convenience, request the Contract Administrator to direct a Variation. Any such request must be in writing and must contain the following details:

* + 1. a description of the Variation;
    2. the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Commonwealth including the amount;
    3. any benefits which will flow to the Commonwealth from the Variation; and
    4. the effect which the Variation will have upon the ECI Activities or the future cost of operating and maintaining the Works (as applicable).
  1. Contract Administrator's Determination
     1. After a request is made by the Contractor in accordance with clause 11.7, the Contract Administrator will, in the Contract Administrator's absolute discretion, give a written notice to the Contractor:
        1. rejecting the request; or
        2. approving the request either conditionally or unconditionally.
     2. The Contract Administrator will not be obliged to exercise the Contract Administrator's discretion for the benefit of the Contractor.
  2. Contractor Variation Request Approved by Contract Administrator

If the Contract Administrator issues a written notice under clause 11.8 approving the Contractor's request under clause 11.7:

* + 1. unless otherwise agreed, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Variation;
    2. if the Contractor's request offered to share savings in cost with the Commonwealth, the Contract Price will be reduced by or adjusted in accordance with the Contractor's offer; and
    3. the Contractor will be responsible for all parts of the ECI Activities and the Works which are in any way affected by the Variation.

1. PAYMENT
   1. Payment Obligation

Subject to clause 12.17 and to any other right to set‑off which the Commonwealth may have, the Commonwealth will pay the Contractor:

* + 1. the Contract Price; and
    2. any other amounts which are payable by the Commonwealth to the Contractor under the Contract.
  1. Payment Claims

The Contractor must give the Contract Administrator claims for payment on account of the Contract Price and all other amounts then payable by the Commonwealth to the Contractor under the Contract:

* + 1. at the times specified in the Contract Particulars until Completion or termination of the Contract (whichever is earlier);
    2. unless terminated earlier, after Completion or the Defects Liability Period within the time required by clause 12.11 or 12.13;
    3. in the format set out in the Schedule of Collateral Documents or in any other format which the Contract Administrator reasonably requires;
    4. which are based on the Table of Variation Rates and Prices to the extent this is relevant;
    5. which show separately the amounts (if any) claimed on account of:
       1. the Contract Price, including (as applicable) the currency or currencies in which it is claimed (which currencies must be in accordance with the breakdown in the Fee Payment Schedule (if any)); and
       2. all other amounts then payable by the Commonwealth 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 Commonwealth 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. Certification to Accompany Submission of Payment Claim

The Contractor must, with each payment claim under clause 12.2, certify to the Contract Administrator that it has:

* + 1. complied with clause 4.1;
    2. if clause 4.4 applies, complied with clause 4.4;
    3. complied with clause 5.4;
    4. if clause 6.13 applies, complied with clause 6.13;
    5. complied with clause 8.5(f);
    6. complied with clause 8.17;
    7. complied with clause 10.2; and
    8. complied with clause 12.18.
  1. Payment Statement

The Contract Administrator:

* + 1. must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 12.2; or
    2. may, if the Contractor fails to submit any such claim in accordance with clause 12.2, at any time,

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

* + 1. the payment claim to which it relates (if any);
    2. the amount previously paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract;
    3. the amount (if any) which the Contract Administrator believes to be then payable by the Commonwealth to the Contractor on account of the Contract Price and otherwise in accordance with the Contract and which the Commonwealth proposes to pay to the Contractor; and
    4. if the amount in paragraph (e) is less than the amount claimed in the payment claim:
       1. the reason why the amount in paragraph (e) is less than the amount claimed in the payment claim; and
       2. if the reason for the difference is that the Commonwealth 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 the Contractor's Activities or the Works, nor will it be taken as an admission or evidence that the part of the Contractor's Activities or the Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract;
    2. a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment statement;
    3. an admission or evidence of the value of the Contractor's Activities or the Works or that the Contractor's Activities or the Works comply with the Contract;
    4. an admission or evidence of liability; or
    5. otherwise, any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract.
  1. Payment
     1. Within 3 business days of the Contractor receiving a payment statement under clause 12.4, the Contractor must give the Contract Administrator a tax invoice for the amount stated as then payable by the Commonwealth to the Contractor in the payment statement.
     2. Within the number of business days specified in the Contract Particulars of the Contract Administrator receiving a tax invoice from the Contractor under and in accordance with paragraph (a), the Commonwealth will pay the Contractor the amount stated as then payable by the Commonwealth to the Contractor in the relevant payment statement given under clause 12.4.
  2. Payment on Account

Any payment of moneys under clause 12.5 will not constitute:

* + 1. approval of the Contractor's Activities or the Works, nor will it be taken as an admission or evidence that the part of the Contractor's Activities or the Works covered by the payment has been satisfactorily carried out in accordance with the Contract;
    2. a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment;
    3. an admission or evidence of the value of the Contractor's Activities or the Works or that the Contractor's Activities or the Works comply with the Contract;
    4. an admission or evidence of liability; or
    5. otherwise, any approval, admission or evidence by the Commonwealth 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. Applicable Currencies

Where the Contract Price is comprised of more than one currency:

* + 1. subject to paragraph (b), where the Contract provides for an adjustment to the Contract Price, any agreement between the Contract Administrator and the Contractor or determination by the Contract Administrator in respect of that adjustment must be made to the extent reasonably practicable in the relevant currency or currencies having regard to the Fee Payment Schedule and, if relevant, the location from which the goods and services are or will be sourced or provided; and
    2. to the extent that an adjustment to the Contract Price is to be determined by the Contract Administrator, and the Contract Administrator considers that it is not reasonably practicable to determine the adjustment having regard to the Fee Payment Schedule or the location from which the goods and services are or will be sourced or provided, the Contract Administrator shall determine the adjustment in Australian dollars.
  1. Long Lead Time and Specialised Items
     1. In the Delivery Phase, the Contractor may include in the value of work in a payment claim under clause 12.2 amounts up to a maximum cumulative amount specified in the Contract Particulars for:
        1. the procurement of long lead time, custom or specialised items; or
        2. the payment of deposits to subcontractors where such deposits are necessary to acquire the relevant goods or services,

where each of the following are satisfied:

* + - 1. the Contract Administrator has (in its absolute discretion) given its prior written approval to include the relevant amount in the payment claim; and
      2. the Contractor gives the Contract Administrator with (or prior to) the payment claim additional Approved Security equal to the relevant amount to be claimed.
    1. The Contractor must ensure that the amount claimed is used for the purpose for which it was approved by the Contract Administrator under paragraph (a) and, where required by the Contract Administrator, provide evidence satisfactory to the Contract Administrator of such use.
  1. Other Unfixed Goods and Materials
     1. Unfixed goods or materials which are not the subject of an approval under clause 12.8 must not be included in the value of work in a payment statement under clause 12.4 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 a payment claim under clause 12.2:
           1. additional Approved Security equal to the percentage specified in the Contract Particulars of the amount 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 Commonwealth upon payment;
        3. the unfixed goods and materials are clearly marked as the property of the Commonwealth 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.
     2. Upon payment by the Commonwealth of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Commonwealth.
  2. Release of Additional Approved Security

If the Contractor has given the Commonwealth additional Approved Security under clause 12.8 or clause 12.9, the Commonwealth must, when the relevant goods and materials are incorporated into the Works on Site or the relevant services have been performed, release the additional Approved Security referable to such goods, materials or services.

* 1. Completion Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Notice of Completion for the Works or a Stage, the Contractor must give the Contract Administrator:
        1. a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Commonwealth on account of the Contract Price and all other amounts payable under the Contract; and
        2. notice of any other amounts which the Contractor claims from the Commonwealth,

in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works 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 Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.
    1. The payment claim and notice required under clause 12.11 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 16.5.

* 1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.11 has passed, the Contractor releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works 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 Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.11 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.11.

* 1. Final Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contract Administrator) of the end of the Defects Liability Period, the Contractor must give the Contract Administrator:
        1. a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Commonwealth on account of the Contract Price and all other amounts payable under the Contract; and
        2. notice of any other amounts which the Contractor claims from the Commonwealth,

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

* + - 1. in the case of the Works, occurred during the Defects Liability Period for the Works; or
      2. in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage.
    1. The payment claim and notice required under clause 12.13 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.
    2. Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.
  1. Release after Final Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.13 has passed, the Contractor releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract which:

* + 1. in the case of the Works, occurred during the Defects Liability Period for the Works; or
    2. in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.13 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.13.

* 1. Interest
     1. The Commonwealth will pay simple interest at the rate specified in the Contract Particulars on any:
        1. amount stated as then payable by the Commonwealth in a payment statement under clause 12.4, but which is not paid by the Commonwealth within the time required by the Contract; and
        2. damages (excluding any delay damages payable under clause 10.10).
     2. This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
  2. Correction of Payment Statements

The Contract Administrator may, in any payment statement:

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

given by the Contract Administrator.

* 1. Right of Set-Off

The Commonwealth may:

* + 1. deduct from moneys otherwise due to the Contractor:
       1. any debt or other moneys due from the Contractor to the Commonwealth (including liquidated damages payable under clause 13.7); and
       2. any claim to money which the Commonwealth asserts in good faith against the Contractor whether for damages or otherwise, under the Contract or otherwise at law or in equity arising out of or in connection with the Contractor's Activities or the Works; and
    2. without limiting paragraph (a), deduct any debt, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from:
       1. any amount which may be or thereafter become payable to the Contractor by the Commonwealth in respect of any Variation the subject of a Variation Order under clause 11.2; or
       2. without limiting the unconditional nature of the security held under clause 4.1, the security held under clause 4.1.
  1. Payment of Workers and Subcontractors

The Contractor must with each payment claim submitted under clause 12.2 provide the Contract Administrator with:

* + 1. a declaration in a form approved by the Contract Administrator, 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 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 or 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 Contractor's Activities or the Works; and
       2. all subcontractors have been paid all moneys due and payable to them in respect of the Contractor's Activities or 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 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 or the Works.

The Commonwealth is entitled to withhold from any amount stated as then payable by the Commonwealth in a payment statement under clause 12.4 the amount disclosed as unpaid under clause 12.18.

* 1. General Liability for Taxes

Subject to clause 12.20, unless otherwise stated in the Contract Particulars, as between the Commonwealth and the Contractor, the Contractor bears the risk of, and must pay, all Taxes incurred or imposed in connection with the:

* + 1. Works;
    2. Contractor's Activities;
    3. Contract; or
    4. Site,

and the Contract Price is not subject to adjustment or gross up on account of any Tax.

The Contractor must indemnify the Commonwealth against any loss, damage or liability arising out of or in connection with Taxes which the Contractor is required to pay under this clause 12.19.

* 1. GST
     1. Subject to paragraph (b), where any supply arises out of or in connection with the Contract, the Contractor's Activities 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 arising out of or in connection with the Contract, the Contractor's Activities 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 clause 12.20, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.
  2. Accounting Records

The Contractor must keep accurate and up to date accounting records including books of account, labour time sheets, invoices for materials, plant hire, final accounts and any other documents or papers which show all details in relation to:

* + 1. all Variations; and
    2. without limiting paragraph (a) all amounts paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract.
  1. Cost Allocation Advice

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Contractor must, with each payment claim under clause 12.2, provide the Contract Administrator with accurate information which apportions monthly costs against buildings, infrastructure and expenses for all work completed since the Commonwealth's previous payment to the Contractor.

* 1. Fee Payment Schedule

If the Contract Price is adjusted under the Contract, the Fee Payment Schedule will (where applicable) be adjusted:

* + 1. as agreed between the parties; or
    2. failing agreement, as determined by the Contract Administrator.

1. COMPLETION
   1. Contractor to Notify
      1. Nothing in clause 13 limits the Contractor's obligations, or the Commonwealth's or the Contract Administrator's rights, under clause 9.14.
      2. The Contractor must give the Contract Administrator written notice 28 days, and then again 14 days, before it anticipates achieving Completion.
   2. Contract Administrator to Inspect

The Contract Administrator must:

* + 1. promptly, and in any event no later than 14 days after receiving the Contractor's second written notice under clause 13.1(b) or a notice under paragraph (d) (as the case may be), inspect the Works or the Stage; and
    2. if:
       1. satisfied that Completion has been achieved, issue a notice to the Commonwealth and the Contractor:
          1. stating the date upon which the Contract Administrator determines Completion was achieved; and
          2. containing a list of any minor Defects of the type described in paragraph (a) of the definition of "Completion" in clause 1.1; or
       2. not satisfied that Completion has been achieved, issue a notice so advising the Contractor and the Commonwealth.

If the Contract Administrator issues a notice under paragraph (b)(ii), the Contractor must:

* + 1. proceed to bring the Works or the Stage to Completion; and
    2. when it considers it has achieved Completion, give the Contract Administrator written notice to that effect (after which clause 13.2 will reapply).
  1. Unilateral Issue of Completion Notice

If at any time a notice required to be given by the Contractor to the Contract Administrator under clause 13.1(b) or 13.2 is not given by the Contractor yet the Contract Administrator is of the opinion that Completion has been achieved, the Contract Administrator may issue a Notice of Completion under clause 13.2(b)(i).

* 1. Take Over Upon Completion

Upon the issue of a Notice of Completion, the Contractor must:

* + 1. handover the Works or the Stage to the Commonwealth, or such other persons as may be nominated in writing by the Contract Administrator (including the Host Nation); and
    2. correct all Defects listed in the Notice of Completion as soon as possible.
  1. Part of the Works or a Stage

The Commonwealth or such other persons as may be nominated in writing by the Contract Administrator (including the Host Nation) may, after written notice is given to the Contractor by the Contract Administrator, occupy, use, operate or maintain (or arrange for Other Contractors to occupy, use, operate or maintain) any part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.

If any such notice is given by the Contract Administrator:

* + 1. the Commonwealth must allow the Contractor, or procure for the Contractor, reasonable access to the part of the Works or the Stage referred to in the notice and being occupied, used, operated or maintained, to enable the Contractor to bring the Works or the relevant Stage of which the area being occupied, used, operated or maintained forms part to Completion; and
    2. this will not limit or affect the obligations of the Contractor under the Contract, including the obligation of the Contractor to achieve Completion of the Works or the relevant Stage of which the area being occupied, used, operated or maintained forms part by the relevant Date for Completion.
  1. Effect of Notice of Completion

A Notice of Completion will not:

* + 1. constitute approval of the Contractor's Activities, the Works or the Stage, nor will it be taken as an admission or evidence that the Contractor's Activities, the Works or the Stage have or has been satisfactorily carried out in accordance with the Contract;
    2. constitute an admission or evidence that the Contractor's Activities, the Works or the Stage comply or complies with the Contract;
    3. otherwise, constitute any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract; or
    4. prejudice any rights or remedies of the Commonwealth or Contract Administrator under the Contract or otherwise at law or in equity.
  1. Liquidated Damages
     1. If the Date of Completion of the Works or a Stage has not occurred by the Date for Completion for the Works or the Stage, the Contractor must pay liquidated damages at the rate specified in the Contract Particulars for every day after the Date for Completion until the Date of Completion or the Contract is terminated, whichever is first.
     2. This amount is an agreed genuine pre-estimate of the Commonwealth's damages if the Date of Completion does not occur by the Date for Completion.
     3. The amount payable under clause 13.7 will be a debt due from the Contractor to the Commonwealth.

1. TERMINATION
   1. Preservation of Rights

Subject to clause 14.6, nothing in clause 14 or that the Commonwealth does or fails to do pursuant to clause 14 will prejudice any right or remedy of the Commonwealth (including the recovery of damages) where the Contractor breaches (including repudiates) the Contract.

* 1. Contractor Default

The Commonwealth may give a written notice under clause 14.3 to the Contractor if the Contractor is in breach of the Contract.

* 1. Contents of Notice of Default

A notice under clause 14.3 must state:

* + 1. that it is a notice under clause 14.3;
    2. the failure or breach relied upon; and
    3. that the Commonwealth requires the Contractor to remedy the failure or breach within the number of days specified in the Contract Particulars of receiving the notice.
  1. Termination for Insolvency or Breach

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 does not remedy a failure or breach the subject of a notice under clause 14.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 14.3;
    3. an instruction has been given under clause 9.6(a) or (b), the Contractor fails to comply with clause 9.7; or
    4. the Contractor fails to comply with:
       1. clause 19;
       2. clause 21; or
       3. if clause 22 applies, clause 22,

then the Commonwealth may by written notice to the Contractor immediately (and without having to first give a notice under clause 14.3, except in the case of paragraph (b)) terminate the Contract.

* 1. Commonwealth's Entitlements after Termination by Commonwealth

Subject to clause 14.1, if the Commonwealth terminates the Contract under clause 14.4, or if the Contractor repudiates the Contract and the Commonwealth otherwise terminates the Contract:

* + 1. the Commonwealth will:
       1. be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Works;
       2. be entitled to require the Contractor to novate to the Commonwealth or the Commonwealth's nominee, any or all subcontracts between the Contractor and its subcontractors as required by the Commonwealth;
       3. not be obliged to make any further payments to the Contractor, including any amount the subject of a payment claim under clause 12.2 or a payment statement under clause 12.4; and
       4. be entitled to recover from the Contractor all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with such termination; and
    2. the Contractor must comply with clause 21.3 and, if clause 22 applies, clause 22.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

Clause 14.5 will survive the termination of the Contract.

* 1. Contractor's Entitlements after Termination by Contractor
     1. If the Commonwealth repudiates the Contract and the Contractor terminates the Contract, the Contractor will:
        1. be entitled to payment of an amount determined in accordance with clause 14.8 as if the Commonwealth had terminated the Contract under clause 14.7; and
        2. not be entitled to a quantum meruit.
     2. Clause 14.6 will survive the termination of the Contract.
  2. Termination for Convenience

Without prejudice to any right or remedy of the Commonwealth under the Contract or otherwise at law or in equity, the Commonwealth 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 Commonwealth'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 Contractor's Activities and the Works either itself or by engaging Other Contractors.
  1. Contractor's Entitlements after Termination for Force Majeure or Convenience by Commonwealth

If the Commonwealth terminates the Contract under clause 10.16 or clause 14.7, 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; and
       2. if the termination occurs in the Delivery Phase:
          1. 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:

the value of the goods or materials is not included in the amount payable under subparagraph (i); and

title in the goods and materials will vest in the Commonwealth upon payment; and

* + - * 1. the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Contractor's Activities; and
    1. must:
       1. take all steps possible to mitigate the costs referred to in paragraphs (a)(ii)A and (a)(ii)B; and
       2. comply with clause 21.3 and, if clause 22 applies, clause 22.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

The amounts to which the Contractor is entitled under clause 14.8 will be a limitation upon the Commonwealth's liability to the Contractor arising out of or in connection with the termination of the Contract (whether under clause 14.7 or deemed to be under clause 14.7 through the operation of clause 14.6(a)(i)) and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the termination of the Contract, other than for the amount payable under clause 14.8.

Clause 14.8 will survive the termination of the Contract by the Commonwealth under clause 14.7 or by the Contractor following repudiation by the Commonwealth.

1. DISPUTES
   1. Notice of Dispute
      1. If a dispute or difference arises between the Contractor and the Commonwealth 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 clause 15.
      2. 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.
   2. Expert Determination

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the Contract Administrator under one of the clauses specified in the Contract Particulars and is not resolved within 14 days after a notice is given under clause 15.1, the dispute or difference must be submitted to expert determination.

* 1. The Expert
     1. The expert determination under clause 15.2 is to be conducted by:
        1. the independent industry expert specified in the Contract Particulars; or
        2. where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
     2. If the expert appointed under clause 15.3:
        1. is unavailable;
        2. declines to act;
        3. does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
        4. does not enter into the Expert Determination Agreement or other agreement in accordance with clause 15.9(b) within 14 days of his or her appointment under clause 15.3; or
        5. does not make a determination within the time required by clause 15.8,

the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).

* + 1. If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.
  1. Not Arbitration

An expert determination conducted under clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

* 1. Procedure for Determination

The expert will:

* + 1. act as an expert and not as an arbitrator;
    2. proceed in any manner he or she thinks fit;
    3. conduct any investigation which he or she considers necessary to resolve the dispute or difference;
    4. examine such documents, and interview such persons, as he or she may require; and
    5. make such directions for the conduct of the determination as he or she considers necessary.
  1. Disclosure of Interest

The expert must:

* + 1. disclose to the parties any:
       1. interest he or she has in the outcome of the determination;
       2. conflict of interest;
       3. conflict of duty;
       4. personal relationship which the expert has with either party, or either party's representatives, witnesses or experts; and
       5. other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
    2. not communicate with one party to the determination without the knowledge of the other.
  1. Costs

Each party will:

* + 1. bear its own costs in respect of any expert determination; and
    2. pay one-half of the expert's costs.
  1. Conclusion of Expert Determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under clause 15 within 28 days from the acceptance by the expert of his or her appointment.

* 1. Expert Determination Agreement
     1. The expert will not be liable to the parties arising out of or in connection with the expert determination process, except in the case of fraud.
     2. The parties must enter into the Expert Determination Agreement with the appointed expert or an agreement with the appointed expert on such other terms as the parties and the expert may agree.
  2. Determination of Expert

The determination of the expert:

* + 1. must be in writing;
    2. will be substituted for the relevant direction of the Contract Administrator unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 15.11 and 15.12, any such appeal will be by way of a hearing de novo; and
    3. will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.
  1. Executive Negotiation
     1. If:
        1. clause 15.2 applies, and a notice of appeal is given under clause 15.10; or
        2. clause 15.2 does not apply,

the dispute or difference is to be referred to the Executive Negotiators.

* + 1. The Executive Negotiators must within:
       1. 21 days of:
          1. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
          2. otherwise, the notice of appeal given under clause 15.10; 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 further expert determination).

* 1. Arbitration Agreement

If, within:

* + 1. 21 days of:
       1. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
       2. otherwise, the notice of appeal given under clause 15.10; 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 by a written notice by either party to the other party.

* 1. Arbitration
     1. Arbitration pursuant to clause 15.13 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 and as otherwise set out in clause 15.13.
     2. The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
     3. The second sentence of Article 35(6) of the ICC Rules (in force from 1 March 2017) or its equivalent in any subsequent version of the ICC Rules shall not apply.
     4. The parties agree that:
        1. they have entered into the arbitration agreement under clause 15 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
        2. any arbitration conducted pursuant to clause 15.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
        3. in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
     5. One arbitrator will be appointed.
     6. All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
     7. Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
     8. The oral hearing will be conducted as follows:
        1. the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
        2. the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
        3. oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
        4. the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
        5. not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
        6. in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
     9. Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.
  2. Proportionate Liability

To the extent permitted by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to clause 15.

* 1. 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 the Works; and
    2. otherwise comply with its obligations under the Contract.
  1. Submission to Jurisdiction

Subject to and without derogating from the other provisions of clause 15, the parties submit to the non-exclusive jurisdiction of the courts of Australia (including the courts of any State, Territory or the Commonwealth) and waive the right to object to the hearing of any proceedings before such courts on the grounds of absence of jurisdiction.

1. NOTICES
   1. Notice of Variation

If a direction by the Contract Administrator, other than a Variation Order under clause 11.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Commonwealth arising out of or in connection with the direction:

* + 1. within 7 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Variation;
    2. within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 16.3(b); and
    3. continue to carry out the Contractor's Activities and the Works in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under clause 16.1.
  1. Notices of Other Claims

Except for claims for:

* + 1. an extension of time under clause 10.6;
    2. payment under clause 12.2 of the original Contract Price specified in the Contract Particulars; or
    3. a Variation instructed in accordance with clause 11.2 or to which clause 16.1 applies,

the Contractor must give the Contract Administrator the notices required by clause 16.3 if it wishes to make a Claim against the Commonwealth in respect of any direction by the Contract Administrator or any other fact, matter or thing (including a breach of the Contract by the Commonwealth) under, arising out of or in connection with the Contractor's Activities, the Works or the Contract, including anything in respect of which:

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

as determined by the Contract Administrator.

* 1. Prescribed Notices

The notices referred to in clause 16.2 are:

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

If the direction or fact, matter or thing upon which the Claim under clause 16.1(b) or 16.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Contract Administrator, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

* 1. Time Bar

If the Contractor fails to comply with clause 16.1, 16.2, 16.3 or 16.4:

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

arising out of or in connection with the relevant direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

* 1. Other Provisions Unaffected

Nothing in clauses 16.1 - 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against the Commonwealth.

* 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 16.7 of the Contract" in the subject field of the email.
  1. Receipt of Notices
     1. Subject to paragraph (b), a notice given or served in accordance with clause 16.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
        1. delivery by hand, on delivery;
        2. prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
        3. prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
        4. email, the earlier of:
           1. delivery to the email address to which it was sent; or
           2. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the "sent" email.
     2. In the case of notices under clauses 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 16.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
        1. the date the notice sent by email is taken to be received; or
        2. the date the notice delivered by hand or sent by prepaid express post is taken to be received,

as determined in accordance with paragraph (a).

1. ESD AND WOL
   1. Design and Construction

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must:

* + 1. carry out the ECI Activities;
    2. design the parts of the Works which the Contract requires it to design; and
    3. construct the Works,

in a manner which maximises the achievement of the ESD Principles and the WOL Objectives.

* 1. Consultation

The Contractor must meet with the Contract Administrator, the Commonwealth and Other Contractors at such times as the Contract Administrator may require from time to time to:

* + 1. review the progress of the ECI Activities and the design and construction of the Works against the ESD Principles and the WOL Objectives; and
    2. consult with the Contract Administrator, the Commonwealth, the Design Consultant and Other Contractors as to any designs, materials or methods of construction which they might recommend to maximise the achievement of the ESD Principles and the WOL Objectives.
  1. ESD and WOL Proposals

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must at all times in carrying out the Contractor's Activities:

* + 1. use its best endeavours to identify and recommend to the Contract Administrator, all reasonably available proposals for maximising the achievement of the ESD Principles and the WOL Objectives; and
    2. consult with the Contract Administrator, the Commonwealth and Other Contractors, as to:
       1. proposals which it is considering making under paragraph (a); and
       2. possible proposals under paragraph (a) identified by the Commonwealth.
  1. Post Occupancy Evaluation

The Contract Administrator may:

* + 1. at any time carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the Works; and
    2. without limiting paragraph (a):
       1. inspect the Works to review the extent to which the Contractor has maximised the achievement of the ESD Principles and the WOL Objectives in the design and construction of the Works; and
       2. issue a report to the Commonwealth and the Contractor:
          1. stating the extent to which the Contractor has maximised the achievement of the ESD Principles and the WOL Objectives in the design and construction of the Works; and
          2. containing a list ofany aspects of the Works which do not conform with the requirements of the Contract.

The Contractor:

* + 1. must consult with the Contract Administrator, the Commonwealth and Other Contractors, and must provide such other assistance as is reasonably necessary, for the purposes of the Contract Administrator carrying out the requirements in paragraphs (a) and (b); and
    2. acknowledges and agrees that the Commonwealth may take the results of the post occupancy evaluation into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
  1. Rights and Obligations Not Affected

Neither the Commonwealth’s rights or remedies, nor the Contractor’s obligations under the Contract or otherwise at law or in equity, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

* + 1. the rights conferred upon the Commonwealth or Contract Administrator by clause 17 or the failure by the Commonwealth or the Contract Administrator to exercise any such rights;
    2. the obligations imposed upon the Contractor by clause 17 or the Contractor's compliance with those obligations; or
    3. any direction of the Contract Administrator under or purported to be given under the Contract, including any comment or direction upon or review, acceptance or rejection of:
       1. any advice, recommendation or other assistance provided by the Contractor under clause 17; or
       2. any post occupancy evaluation carried out (including any report prepared and finalised) under clause 17.4.

1. GENERAL
   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 the 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 the Contract only for the purposes of fulfilling its obligations under the 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 the Contract without the prior written approval of the Contract Administrator;
         5. not collect, transfer, store or otherwise use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Contract Administrator;
         6. co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with the Contract;
         7. ensure that any person whom the 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 the Contract is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, as if the person was an agency as defined in the Privacy Act;
         8. comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
         9. ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract are, at the expiration or earlier termination of the Contract, at the Contract Administrator's election, to be either returned to the Commonwealth 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 the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of clause 18.1, 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;
         13. not use Personal Information collected by the Contractor for the purposes of, under, arising out of or in connection with the Contract for, or in any way relating to, any direct marketing purpose; and
         14. indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
             1. a breach of the obligations of the Contractor under clause 18.1;
             2. a breach of a subcontractor's obligations under a subcontract as contemplated by subparagraph (xi);
             3. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor; or
             4. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor in breach of an obligation of confidence.
      2. For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of or in connection with a breach of clause 18.1.
      3. The Contractor must immediately notify the Commonwealth in writing if the Contractor:
         1. becomes aware of a breach of the obligations under clause 18.1 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.
      4. The Contractor acknowledges that, in addition to the requirements of clause 18.1, the Contractor must also comply with any other Statutory Requirement in relation to the handling of Personal Information.
      5. Nothing in clause 18.1 limits any of the Contractor's obligations under the Contract or otherwise at law or in equity.
      6. In clause 18.1, **received** includes collected.
   2. Moral Rights
      1. To the extent permitted by law, the Contractor:
         1. must not, and must take all reasonable steps to ensure that its directors, other officers, employees and subcontractors do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Award Date) in respect of the Project Documents or the Works by:
            1. the Commonwealth;
            2. any third party to whom the Commonwealth sub-licenses (whether that sub‑licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Project Documents or the Works (**Sub-Licensee**);
            3. any third party to whom the Commonwealth assigns any Intellectual Property Rights in the Project Documents or the Works (**Assignee**); or
            4. any Other Contractors;
         2. without limiting subparagraph (i), consents to any of the Commonwealth, Other Contractors, Sub-Licensees and Assignees:
            1. failing to acknowledge or attribute the Contractor's or any other person's authorship of the Project Documents or the Works;
            2. falsely attributing authorship of the Project Documents or the Works; and
            3. making any modification, variation or amendment of any nature whatsoever to the Project Documents or the Works, whether or not:

it results in a material distortion of or destruction or mutilation of the Project Documents or the Works; or

it is prejudicial to the honour or reputation of the Contractor or any other author of the Project Documents or the Works; and

* + - 1. without limiting subparagraphs (i) and (ii), consents to any of the Commonwealth, Other Contractors, Sub-Licensees and Assignees:
         1. using the Project Documents or the Works other than for the purpose for which it was intended at the time the Project Document was or the Works were created;
         2. altering the Project Documents or the Works by adding to or removing elements from, or rearranging elements of, the Project Documents or the Works, including by combining elements of the Project Documents or the Works with any other material; or
         3. changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including the Works), whether or not it incorporates, is based on, or is constructed in accordance with, the Project Documents.
    1. The Contractor must:
       1. in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of a Project Document or any part of the Works, obtain from that person, before he or she creates a Project Document or the relevant part of the Works, a duly completed and executed Moral Rights Consent;
       2. ensure that no person creates a Project Document or any part of the Works before that person has duly completed and executed a Moral Rights Consent;
       3. not coerce any person to complete or execute a Moral Rights Consent;
       4. pay to each person who executes a Moral Rights Consent in accordance with clause 18.2 the sum of $1 on behalf of the Commonwealth;
       5. within 7 days of a Moral Rights Consent having been executed in accordance with clause 18.2, provide the Moral Rights Consent to the Contract Administrator; and
       6. maintain an up-to-date record of the names and addresses of each person who is an author of Project Documents or any part of the Works, and the Project Documents or any part of the Works of which each such person is an author, and provide a copy of the record to the Contract Administrator whenever it is updated.
  1. 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
     1. The Contractor must not, without the prior written approval of the Commonwealth and except on such terms and conditions notified by the Commonwealth, assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.
     2. For the purpose of but without limiting paragraph (a), an assignment of the Contract will be deemed to have occurred where there has been a Change of Control.
  2. Publicity

Without limiting clause 21 and, if clause 22 applies, clause 22, 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. Shadow Economy Procurement Connected Policy
     1. Clause 18.6 does apply unless the Contract Particulars state that it does not apply.
     2. Without limiting the operation of clause 8.5, the Contractor must not enter into a subcontract with a subcontractor (or agree to a novation of a subcontract to a subcontractor) 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.

|  |  |
| --- | --- |
| **If the subcontractor 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 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 Commonwealth with copies of the STRs referred to in paragraph (b) or paragraph (c) within 5 business days after a written request by the Commonwealth.
    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. Fraud Control, Anti-Corruption and Modern Slavery
   1. Fraud Control and Anti-Bribery and Corruption
      1. The Contractor must:
         1. comply, and use all reasonable endeavours to ensure that its officers, employees, subcontractors and agents comply, with all Anti-Corruption Laws;
         2. not, and must use all reasonable endeavours to ensure that its officers, employees, subcontractors and agents do not, engage in Fraud;
         3. proactively take all necessary measures to prevent, detect and investigate any:
            1. Fraud; and
            2. breach of any Anti-Corruption Laws,

in connection with the Contract or the Contractor's Activities (including all measures directed by the Contract Administrator);

* + - 1. ensure that its officers, employees, subcontractors and agents are responsible and accountable to the Contractor for preventing and reporting Fraud and any breaches of Anti-Corruption Laws as part of their routine responsibilities, including by ensuring that any known or suspected Fraud and any breach is reported to the Contractor promptly (and in any case within 5 business days) after becoming aware of such Fraud;
      2. maintain, and procure that its subcontractors maintain, Adequate Procedures to ensure the prevention and detection of Fraud and compliance with Anti-Corruption Laws;
      3. proactively take all necessary corrective action to mitigate any loss or damage to the Commonwealth resulting from Fraud or breach of Anti-Corruption Laws to the extent that the Fraud or breach was caused or contributed to by the Contractor or any of its officers, employees, subcontractors or agents and put the Commonwealth in the position it would have been in if the Fraud or breach had not occurred (including all corrective action directed by the Contract Administrator); and
      4. without limiting the foregoing, comply with the IPACE Supplier Code of Conduct.
    1. Without limiting the foregoing, the Contractor warrants that it will not, either directly or indirectly, offer, make, cause to be made or accept any form of bribe, kickback, political donation, gift or other benefit which would or could be construed as an impropriety or that creates the appearance of an impropriety in connection with the Contract and the Contractor’s Activities.
    2. In this clause 19.1, **Adequate Procedures** means policies, procedures, processes and systems designed to ensure, and which are reasonably capable of ensuring, the prevention and detection of Fraud and compliance with Anti-Corruption Laws, including (without limiting the requirements of this clause 19.1):
       1. internal policies clearly setting out employees' obligations for ensuring compliance with Anti-Corruption Laws;
       2. due diligence procedures for agents, subcontractors and business partners;
       3. adequate training of officers, directors and employees in relation to Fraud prevention and anti-corruption compliance;
       4. undertaking regular risk assessments in relation to susceptibility to Fraud and breaches of the Anti-Corruption Laws; and
       5. maintaining:
          1. books, records and accounts which, in reasonable detail, accurately and fairly reflect activities in sufficient detail to identify potential Fraud and breaches of any Anti-Corruption Laws; and
          2. an internal account controls system that is sufficient to ensure the proper authorisation, recording, and reporting of all transactions and to provide reasonable assurance that Fraud and violations of any Anti-Corruption Laws will be prevented, detected and deterred.
  1. Modern Slavery
     1. The Contractor:
        1. must not, and must use all reasonable endeavours to ensure that its officers, employees, agents and subcontractors do not:
           1. engage in any conduct that would constitute Modern Slavery; and
           2. do anything to put the Contractor or the Commonwealth in breach of any Modern Slavery Law; and
        2. must comply, and must use all reasonable endeavours to ensure that its officers, employees, agents and subcontractors at all times comply with all Modern Slavery Laws,

including by:

* + - 1. implementing and maintaining, and procuring that its subcontractors implement and maintain, Adequate Procedures to ensure prevention, detection and remediation of Modern Slavery and compliance with Modern Slavery Laws; and
      2. using reasonable endeavours to obtain and exercise audit rights with respect to its suppliers and subcontractorsand their supply chains.
    1. In this clause 19.2, **Adequate Procedures** means policies, procedures, processes and systems designed to ensure, and which are reasonably capable of ensuring, the prevention, detection and remediation of Modern Slavery and compliance with Modern Slavery Laws including (without limiting the requirements of this clause 19.2):
       1. internal policies clearly setting out employees' obligations with regards to Modern Slavery prevention, record keeping, detection and remediation and for ensuring compliance with Modern Slavery Laws;
       2. due diligence procedures for agents, subcontractors and business partners;
       3. adequate training of officers, directors and employees in relation to preventing, identifying and responding to Modern Slavery and compliance with Modern Slavery Laws;
       4. undertaking regular risk assessments in relation to susceptibility to Modern Slavery and breaches of the Modern Slavery Laws; and
       5. ensuring access to appropriate grievance mechanisms to allow for employees and subcontractors to safely report instances of Modern Slavery.
  1. Breach or Suspected Breach of Fraud, Anti-Bribery and Corruption or Modern Slavery Obligations
     1. If the Contractor knows or suspects that:
        1. Fraud in connection with this Contract or the Contractor’s Activities (including by any officers, employees, subcontractors and agents); or
        2. any breach (including by any officers, employees, subcontractors and agents) of:
           1. the Anti-Corruption Laws;
           2. the Modern Slavery Laws; or
           3. the other obligations set out in this clause 19,

is occurring or has occurred it must promptly (and in any case within 5 business days or such longer period as the Contract Administrator may agree, acting reasonably) provide a detailed written notice to the Contract Administrator including details of:

* + - 1. the known or suspected Fraud or breach;
      2. how the known or suspected Fraud or breach occurred;
      3. the names of any officers, employees, subcontractors and agents involved;
      4. copies of relevant documents;
      5. references to any relevant Statutory Requirements;
      6. the current status of any inquiries commenced by the Contractor;
      7. the proactive corrective action the Contractor will take under clause 19.1(a) (if applicable);
      8. the proactive measures which the Contractor will take to ensure that the Fraud or breach does not occur again; and
      9. any other relevant information.
    1. Subject to paragraph (c)(i), the Contractor must, in consultation with the Contract Administrator, develop and implement a strategy to investigate the known or suspected Fraud or breach described in paragraph (a) and undertake such investigation at the Contractor’s own cost and in accordance with any directions of or standards required by the Contract Administrator.
    2. The Commonwealth reserves the right to:
       1. appoint its own investigator and conduct its own audit or investigation in accordance with paragraph (d); and
       2. report any Fraud or breach of any Anti-Corruption Law or Modern Slavery Law (as applicable) to the appropriate law enforcement agencies or any other person or entity the Commonwealth deems appropriate in Australia or the Host Nation for further investigation.
    3. At any time during the Contract, the Contractor must permit the Commonwealth, the Contract Administrator and such other persons as may be nominated in writing by the Contract Administrator to conduct an audit and investigation:
       1. in relation to actual or suspected Fraud or a breach as described in paragraph (a); and
       2. to otherwise verify the Contractor’s compliance with this clause 19, irrespective of whether there has been a breach or suspected breach of this clause.
    4. Without limiting the Contractor’s obligations under the Contract or otherwise at law or in equity, the Contractor must:
       1. do all things reasonably necessary to assist the Commonwealth, the Contract Administrator and its nominees with any audit or investigation under this clause 19; and
       2. within 7 days of a request by the Contract Administrator, provide the Contract Administrator with all information reasonably required by the Contract Administrator in connection with the Contractor’s compliance with, or any audit or investigation under, this clause 19.
    5. The Contractor must undertake appropriate remediation actions to address any breaches, issues or failures arising in connection with this clause 19 (including any identified by an audit or investigation carried out under this clause 19.3) at the Contractor’s own cost and in accordance with any directions of or standards required by the Contract Administrator.
  1. Contractor’s Warranty

The Contractor warrants that on the [[Award Date](#AwardDate)](#AwardDate) and on the date of submitting each payment claim under clause 12.2 that, except to the extent disclosed in writing to the Contract Administrator, neither it, nor (having made reasonable enquiries, to the best of its knowledge) any of its officers, employees, subcontractors and agents, have been convicted of any offence, nor have it or they been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body:

* + 1. regarding any Fraud offence, or alleged offence; or
    2. under any applicable:
       1. Anti-Corruption Laws; or
       2. Modern Slavery Laws.
  1. Subcontracts
     1. The Contractor must:
        1. ensure that all subcontracts contain provisions equivalent to the obligations of the Contractor in this clause 19, including rights for the Commonwealth, the Contract Administrator and its nominees to audit and investigate the subcontractor’s compliance on equivalent terms to clause 19.3;
        2. when required by the Contract Administrator, procure access to the subcontractor’s premises and records for the purpose of investigating any known or suspected Fraud or breach of the Anti-Corruption Laws or Modern Slavery Laws; and
        3. provide written notice to the Contract Administrator in accordance with clause 19.3(a) where it suspects or knows a subcontractor (or any of its officers or employees) have breached such equivalent obligations.
     2. The Contract Administrator may by notice in writing instruct the Contractor to terminate any subcontract where in the reasonable opinion of the Contract Administrator a subcontractor (or any of its officers or employees) has been fraudulent or breached the applicable Anti-Corruption Laws or Modern Slavery Laws.
  2. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5, 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 Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
          1. notifies the Contract Administrator under clause 19.3(a); or
          2. has failed to strictly comply with clause 19,

the Commonwealth may (in its absolute discretion) terminate the Contract under clause 14.4; and

* + - 1. the exercise of any of the Commonwealth'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 Commonwealth 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 Commonwealth's absolute discretions under clause 19; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
       1. Fraud or a breach of the applicable Anti-Corruption Laws or Modern Slavery Laws, to the extent caused or contributed to by the Contractor or any officer, employee, subcontractor or agent of the Contractor;
       2. the Contractor’s failure to strictly comply with clause 19; or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 19.

1. COMMERCIAL-IN-CONFIDENCE INFORMATION
   1. General

The Contractor acknowledges that the Commonwealth 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

Clause 20.2 does not apply unless the Contract Particulars state that it applies.

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

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

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

1. INFORMATION SECURITY - CONFIDENTIAL INFORMATION
   1. Contractor's Warranty
      1. The Contractor acknowledges and agrees that the Confidential Information is confidential.
      2. The Contractor warrants that, on the Award Date, the Date of Delivery Phase Approval and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 21 by the Contractor or any Recipient.
   2. Confidential Information Requirements

(a) The Contractor must:

* + - 1. strictly comply with:
         1. clause 21; and
         2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
      2. immediately put in place arrangements to ensure that it strictly complies with:
         1. clause 21; and
         2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
    1. Subject to, if clause 22 applies, clause 22, the Contractor must not:
       1. copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential 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 any part of it) or otherwise cause, permit or allow the Confidential 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.

* + 1. The Contractor must ensure that all Recipients of Confidential Information:
       1. strictly comply with:
          1. clause 21; and
          2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. clause 21; and
          2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
          1. clause 21; or
          2. any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements).
    2. 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. immediately:
         1. detect all actual or potential Confidential Information Incidents;
         2. notify the Contract Administrator if it becomes aware of any actual or potential Confidential Information Incident;
         3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Confidential Information Incident; and
         4. strictly comply with all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements),

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

* 1. Return, Destruction and Erasure of Confidential Information
     1. Within 7 days of:
        1. a request from the Contract Administrator, at any time;
        2. if the Commonwealth issues a notice under clause 2.10(a)(ii), the issue of that notice;
        3. the termination of the Contract under clause 14 or otherwise at law; or
        4. the expiry of the last Defects Liability Period,

the Contractor must:

* + - 1. subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) promptly:
         1. where the Confidential Information is in a tangible form, securely and appropriately return all copies of that Confidential Information to the Contract Administrator;
         2. securely and appropriately destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);
         3. ensure all Recipients of Confidential Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form); and
         4. provide the Contract Administrator with a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer approved by the Commonwealth (acting reasonably) confirming that the Confidential Information 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 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, precise location, entity in possession, custody or control and all relevant Confidential 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 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 clause 21.
    2. The Contractor acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Contractor's obligations under clause 21.
  1. Compliance

Within 24 hours (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 21 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Contractor and all Recipients have in place; and
       2. a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Contractor's and all Recipients' compliance with clause 21 (including any Separation Arrangements and the Confidential Information Requirements),

by the time and date specified in the request; and

* + 1. as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environments and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 21 (including any Separation Arrangements and Confidential Information Requirements), 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 Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5 and proceeded to the Delivery Phase, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 21;
       2. without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
          1. notifies the Contract Administrator under clause 21.2(d)(ii)B; or
          2. has failed to strictly comply with:

clause 21; or

any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements),

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

* + - * 1. terminate the Contract under clause 14.4; or
        2. take such Confidential Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
      1. the exercise of any of the Commonwealth's absolute discretions under 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;
    1. releases the Commonwealth 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 Commonwealth's absolute discretions under clause 21; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
       1. a Confidential Information Incident;
       2. the Contractor's failure to strictly comply with clause 21 or any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements); or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 21.

1. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Clause 22 does not apply unless the Contract Particulars state that it applies.

* 1. Sensitive and Classified Information, generally
     1. Nothing in clause 22 limits the Contractor's obligations under clause 21.
     2. The Contractor acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.
  2. Contractor's Warranties
     1. The Contractor warrants that, on the Award Date, the Date of Delivery Phase Approval and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 22 by the Contractor or any Recipient.
     2. The Contractor warrants that, except as otherwise approved in writing by the Commonwealth, each Recipient of the 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 Commonwealth in the Contract Particulars or in accordance with clause 22.3(d)(i)B.1) (as applicable):
        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.
  3. Sensitive and Classified Information Requirements
     1. The Contractor must:
        1. strictly comply with:
           1. clause 22; and
           2. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
        2. immediately put in place arrangements to ensure that it strictly complies with:
           1. clause 22; and
           2. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
     2. Subject to paragraphs (c) and (d), the Contractor must not:
        1. copy or otherwise reproduce in any form or medium the contents of the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the 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 Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

for any purpose, including carrying out the Contractor's Activities and the Works.

* + 1. 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, and a justification as to why those Recipients have a need to know such information).
    2. Where a request for copying, reproduction, disclosure, use or dealing is made under paragraph (c), the Contract Administrator will notify the Contractor that the Commonwealth (in its absolute discretion) either:
       1. grants permission, whether with or without such conditions as the Commonwealth thinks fit including any conditions:
          1. with respect to the level/s of accreditation or certification required for the physical and information technology environments (as applicable) in which the Sensitive and Classified Information is to be kept; or
          2. 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 in the notice 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

enter into a deed in a form approved by the Commonwealth; or

* + - 1. refuses permission.
    1. If the Commonwealth grants permission under paragraph (d)(i), the Contractor must strictly comply with any conditions notified under paragraph (d)(i).
    2. The Contractor must ensure that all Recipients of Sensitive and Classified Information:
       1. strictly comply with:
          1. clause 22; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. clause 22; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
          1. clause 22; or
          2. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
    3. The Contractor must:
       1. ensure:
          1. the Sensitive and Classified Information (or any part of it); and
          2. all containers, devices or systems on or in which the Sensitive and Classified Information (or any part of it) may be contained, stored, transferred, transmitted or communicated (including via electronic or similar means),

are strictly kept:

* + - * 1. at locations in Australia only (unless otherwise approved in writing by the Commonwealth (in its absolute discretion));
        2. in physical and information technology environments (as applicable) which are accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified by the Commonwealth in the Contract Particulars or in accordance with paragraph (d)(i)A (as applicable):

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

at all times during the Contractor's (or any Recipient's) access to or storage of the Sensitive and Classified Information,

and are not introduced into or kept in any physical or 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 E, secure and protected at all times from all use, access, configuration and administration (or similar) from any location outside of Australia (unless otherwise approved in writing by the Commonwealth (in its absolute discretion));
        3. in accordance with all Statutory Requirements of Australia (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 Sensitive and Classified Information Incidents;
         2. notify the Contract Administrator if it becomes aware of any actual or potential Sensitive and Classified Information Incident;
         3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Sensitive and Classified Information Incident; and
         4. strictly comply with all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements),

(together the **Sensitive and Classified Information Requirements**).

* 1. Return, Destruction and Erasure of Sensitive and Classified Information
     1. Within 7 days of:
        1. a request from the Contract Administrator, at any time;
        2. if the Commonwealth issues a notice under clause 2.10(a)(ii), the issue of that notice;
        3. the termination of the Contract under clause 14 or otherwise at law; or
        4. the expiry of the last Defects Liability Period,

the Contractor must:

* + - 1. subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) and in accordance with all Statutory Requirements of Australia (including the Information Security Requirements), promptly:
         1. where the Sensitive and Classified Information is in a tangible form, securely and appropriately return all copies of that Sensitive and Classified Information to the Contract Administrator;
         2. securely and appropriately destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form);
         3. ensure all Recipients of Sensitive and Classified Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form); and
         4. provide the Contract Administrator with a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer approved by the Commonwealth (acting reasonably) confirming that the Sensitive and Classified Information has been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
      2. promptly notify the Contract Administrator of all 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 Sensitive and Classified Information, precise location, entity in possession, custody or control and all relevant Sensitive and Classified Information security procedures, security processes and information security arrangements).

* + 1. To the extent required by a Statutory Requirement, the Contractor may keep one copy of the Sensitive and Classified Information for its records subject to the Contractor:
       1. promptly notifying the Contract Administrator of all Sensitive and Classified Information it proposes to keep and the detailed basis for doing so; and
       2. maintaining the information security of the Sensitive and Classified Information in accordance with clause 22.
    2. The Contractor acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Contractor's obligations under clause 22.
  1. Compliance

Within 12 hours (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 22 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Contractor and all Recipients have in place; and
       2. a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Contractor's and all Recipients' compliance with clause 22 (including any Separation Arrangements and the Sensitive and Classified Information Requirements); and
    2. as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 22 (including any Separation Arrangements and Sensitive and Classified Information Requirements).
  1. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5 and proceeded to the Delivery Phase, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 22;
       2. without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
          1. notifies the Contract Administrator under clause 22.3(g)(ii)B; or
          2. has failed to strictly comply with:

clause 22; or

any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements),

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

* + - * 1. terminate the Contract under clause 14.4; or
        2. take such Sensitive and Classified Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
      1. the exercise of any of the Commonwealth's absolute discretions under clause 22 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 Commonwealth 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 Commonwealth's absolute discretions under clause 22; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
       1. a Sensitive and Classified Information Incident;
       2. the Contractor's failure to strictly comply with clause 22 or any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 22.

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

Subject to clause 23.2, the Contractor warrants that, on the Award Date, the Date of Delivery Phase Approval and on the date of submitting each payment claim under clause 12.2, 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 Commonwealth.
  1. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5 and proceeded to the Delivery Phase, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 23;
       2. without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if:
          1. the Contractor:

notifies the Contract Administrator under clause 23.2; or

has failed to strictly comply with clause 23; or

* + - * 1. the Commonwealth 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 Commonwealth 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 Commonwealth to 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 Commonwealth,

by the time and date specified in the notice; or

provide the Commonwealth with 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 Commonwealth,

by the time and date specified in the notice;

* + - * 1. regardless of whether or not the Commonwealth 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 Commonwealth 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 Commonwealth,

by the time and date specified in the notice; or

the Commonwealth has elected to treat the Material Change or Strategic Interest Issue as an Insolvency Event for the purposes of clause 14.4 and terminate the Contract under clause 14.4; or

take such Material Change or Strategic Interest Issue or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and

* + - 1. the exercise of any of the Commonwealth's absolute discretions under clause 23 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 Commonwealth 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 Commonwealth's absolute discretions under clause 23; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth 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 23; or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 23.

1. financial viability
   * 1. The Contractor:
        1. warrants that, on the Award Date, the Date of Delivery Phase Approval and on the date of submitting each payment claim under clause 12.2:
           1. it has the financial viability necessary to perform the Contractor's Activities, achieve Completion of the Works or each Stage 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 Stage has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
        2. acknowledges and agrees that the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5 and proceeded to the Delivery Phase, strictly on the basis of and in reliance upon the obligations and warranties set out in clause 24.
     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 Stage 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:
       1. provide the Contract Administrator with a solvency statement in the form required by the Commonwealth 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; and
       2. ensure:
          1. its Financial Representative is available; and
          2. each subcontractor makes its Financial Representative available,

to provide the Contract Administrator and any independent financial adviser engaged by the Commonwealth with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist the Commonwealth, the Contract Administrator and the independent financial adviser engaged by the Commonwealth for the purpose of demonstrating that:

* + - * 1. the Contractor has the financial viability necessary to perform the Contractor's Activities, achieve Completion of the Works or each Stage and otherwise meet its obligations under the Contract (including the payment of all subcontractors in accordance with paragraph (b)); or
        2. a subcontractor has the financial viability necessary to perform its activities in accordance with the relevant subcontract.
    1. If the Commonwealth 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 Stage 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 Commonwealth considers necessary to secure the performance of the Contractor's Activities, the Completion of the Works or each Stage 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 Commonwealth under clause 4.1(a);
      2. provide a Deed of Guarantee, Undertaking and Substitution in the form required by the Commonwealth;
      3. establish a trust account for the payment of subcontractors on the terms (including any trust deed) required by the Commonwealth;
      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 Commonwealth 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 Commonwealth. If such direction is given in the Planning Phase, the Contractor's compliance with this paragraph (f) is a condition precedent to Delivery Phase Approval.
    2. The Contractor acknowledges and agrees that:
       1. nothing in clause 24 will limit, reduce, or otherwise affect any of the rights of the Commonwealth under other provisions of the Contract or otherwise at law or in equity;
       2. neither the Commonwealth nor the Contract Administrator is required to exercise any discretion under clause 24 for the benefit of the Contractor (or any subcontractor);
       3. clause 24 does not give the Contractor (or any subcontractor) any rights; and
       4. the exercise or failure to exercise a discretion under clause 24 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.

Unless otherwise approved by the Contract Administrator, the Contractor must ensure that each subcontract includes provisions equivalent to the obligations of the Contractor in clause 24.

1. WORKS INFORMATION
   1. General

Without limiting clauses 8.13 and 9.14, the Contractor must:

* + 1. do all things necessary to assist the Commonwealth, the Host Nation and Other Contractors to occupy, use, operate and maintain the Works or a Stage;
    2. provide all Works Information required for the occupation, use, operation and maintenance of the Works or a Stage to the Contract Administrator in accordance with Annexure 1; and
    3. within 28 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Notice of Completion for the Works or a Stage, give the Contract Administrator final versions of all documents and other information in respect of which drafts were provided in accordance with clause 1 of Annexure 1 (in the same number and format specified in Annexure 1 as applying to the draft versions).
  1. Subcontractor Review of Works Information

The Contractor must:

* + 1. ensure that all relevant subcontractors (including all design subcontractors) have reviewed the Works Information prior to submission to the Contract Administrator; and
    2. at the time of submitting Works Information, submit a comprehensive list of all prior reviews carried out by subcontractors of that Works Information in accordance with paragraph (a).
  1. Contract Administrator May Review Works Information
     1. The Contract Administrator may:
        1. review any Works Information, or any resubmitted Works Information, prepared and submitted by the Contractor; and
        2. within 7 days of the submission by the Contractor of such Works Information or resubmitted Works Information, reject the Works Information if in the Contract Administrator's reasonable opinion the Works Information does not comply with the requirements of the Contract.
     2. If any Works Information is rejected, the Contractor must submit amended Works Information to the Contract Administrator, in which case clause 25.3(a) will reapply.
  2. No Obligation to Review
     1. The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, any Works Information submitted by the Contractor for errors, omissions or compliance with the Contract.
     2. No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Works Information prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Commonwealth in relation to, any Works Information will:
        1. relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise at law or in equity; or
        2. prejudice the Commonwealth's rights against the Contractor whether under the Contract or otherwise at law or in equity.
  3. Submission of Works Information

For the purposes of this clause 25, the Contractor must submit or resubmit to the Contract Administrator the Works Information in the number and format specified in Annexure 1.

* 1. Contractor's Warranty

The Contractor warrants that all Works Information it provides will be:

* + 1. in accordance with the Contract;
    2. fit for its intended purpose; and
    3. complete and free from errors and omissions.

Contract PARTICULARS

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS | | | | | | | | | | |
| 1. **Additional Host Nation Requirements:**   (Clause 1.1) | | |  | | | | | | | |
| **Completion - additional conditions precedent to Completion:** (Clause 1.1) | | |  | | | | | | | |
| **Contract - other documents forming part of the Contract:** (Clause 1.1) | | |  | | | | | | | |
| **Contract Administrator:** (Clause 1.1) | | |  | | | | | | | |
| **Contractor:** (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Contractor's Representative:** (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Date for Completion:** (Clause1.1) | | | Where there are no Stages, for the Works is:  [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | | | | | |
| Where there are Stages, for each Stage is: | | | | | | | |
| **Stage** | | | | **Date for Completion** | | | |
| [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | |
|  | | | |  | | | |
|  | | | |  | | | |
| **Date for Delivery Phase Approval:** (Clause 1.1) | | |  | | | | | | | |
| **Defects Liability Period:** (Clause 1.1) | | |  | | | | | | | |
| **Delivery Phase Approval - additional requirements:** (Clause 1.1) | | |  | | | | | | | |
| **Delivery Phase Price:** (Clause 1.1) | | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | | | | | |
| **Design Consultant:** (Clause 1.1) | | |  | | | | | | | |
| **ECI Brief:** (Clause 1.1) | | | As set out in Attachment 1 to the Contract Particulars | | | | | | | |
| **ECI Objectives (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Environmental Management Plan (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Environmental Objectives (additional):** (Clause 1.1) | | |  | | | | | | | |
| **ESD Principles (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Executive Negotiators:** (Clause 1.1) | | | **Commonwealth**: Assistant Secretary Indo-Pacific Enhanced Engagement Branch  **Contractor**: [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Fee Payment Schedule:** (Clause 1.1) | | | As set out in Attachment 2 to the Contract Particulars | | | | | | | |
| **Host Nation:**  (Clause 1.1) | | |  | | | | | | | |
| **HOTO Process (additional):** (Clause 1.1) | | | The following documents, available on DEQMS or such other location notified by the Contract Administrator:  1. "Instructions for Operations and Maintenance Manuals (O&MM) for IPACE Infrastructure Directorate";  2. "Asset Management Directive: Infrastructure Sustainment and Maintenance Program"; and  3. "Strategic Asset Management Plan: Infrastructure Sustainment and Maintenance Program",  each as amended from time to time. | | | | | | | |
| **Indicative Date for Completion:**  (Clause 1.1) | | | Where there are no Stages, for the Works is: | | | | | | | |
| Where there are Stages, for each Stage is: | | | | | | | |
| **Stage** | | **Indicative Date for Completion** | | | | | |
|  | | | | | | | |
|  | | | | | | | |
| **Indicative Delivery Phase Price:**  (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Outline Delivery Phase Program:**  (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Pandemic Adjustment Event (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Pandemic Management Plan (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Planning Phase Design Documentation:** (Clause 1.1) | | |  | | | | | | | |
| **Planning Phase Milestones and Planning Phase Milestone Dates:** (Clause 1.1) | | | **Planning Phase Milestone** | **Description** | | | | | | **Planning Phase Milestone Date** |
| ***[50% Schematic Design Report]*** | ***[Each of the following has been achieved:***  ***(a) Planning Phase Design Documentation comprising the 50% Schematic Design Report has been submitted to, and not rejected by, the Contract Administrator under the Design Services Contract;***  ***(b) the Contractor has completed all ECI Activities required by the Contract in respect of the 50% Schematic Design Report prepared by the Design Consultant; and***  ***(c) each of the other activities to be undertaken as described in section [INSERT] of the ECI Brief has been completed by the Contractor in accordance with the requirements set out in the ECI Brief]*** | | | | | |  |
| ***[INSERT]*** | ***[INSERT]*** | | | | | |  |
| ***[INSERT]*** | ***[INSERT]*** | | | | | |  |
| **Planning Phase Price:** (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Project Plans (additional):** (Clause 1.1) | | | If clause [10] of the Special Conditions applies, Method of Work Plan for Airfield Activities.  **[*COMMONWEALTH TO INSERT ANY ADDITIONAL PLANS REQUIRED*]** | | | | | | | |
| **Provisional Sum Work:** (Clauses 1.1, 8.7, 8.9, 8.10, 8.11 and 8.12) | | | **Work or Goods** | | | **Amount** | | | | |
| [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), if any, subject to Delivery Phase Approval being achieved] | | |  | | | | |
|  | | |  | | | | |
|  | | |  | | | | |
| **Total:** | | |  | | | | |
| **Schedule of Collateral Documents:** (Clause 1.1) | | | 1. Approved Security (Unconditional Undertaking)  2. Collateral Warranty  3. Moral Rights Consent  4. Subcontractor Deed of Covenant  5. Consultant Deed of Covenant  6. Deed of Guarantee, Undertaking and Substitution  7. Contractor Design Certificate  8. Consultant Design Certificate  9. Subcontractor Design Certificate  10. Payment Claim  11. Payment Statement  12. Expert Determination Agreement  13. Delivery Phase Terms  14. If clause [15] of the Special Conditions applies, the “Consultant Deed of Novation” as defined in that clause. | | | | | | | |
| **Site:** (Clause 1.1) | | |  | | | | | | | |
| **Site Management Plan (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Stages of the Works:** (Clause 1.1) | | |  | | | | | | | |
| Statutory Requirements (additional):  (Clause 1.1) | | | (IPACE Supplier Code of Conduct and Infrastructure Directorate Dispensations Process, unless otherwise stated) | | | | | | | |
| **Table of Variation Rates and Prices:** (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **WOL Objectives (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Work Health and Safety Plan (additional):** (Clause 1.1) | | |  | | | | | | | |
| **Works:** (Clause 1.1) | | |  | | | | | | | |
| **Days which are not a "business day" (additional):**  (Clause 1.2(m)(iii)) | | | (27, 28, 29, 30 and 31 December, unless otherwise stated) | | | | | | | |
| **Governing law:** (Clause 1.3(a)) | | | (The law in the State of New South Wales, Australia applies unless otherwise stated) | | | | | | | |
| CLAUSE 2 – ENGAGEMENT, PLANNING PHASE AND ECI ACTIVITIES | | | | | | | | | | |
| **Other conditions precedent to Site access during the Planning Phase:** (Clause 2.8(b)(vii)) | | |  | | | | | | | |
| **Date for Site access for commencement of Works on Site:** (Clause 2.10(b)(ii)A) | | | ***[INSERT WEEKS/DAYS]*** after the date on which the Commonwealth issues a notice under clause 2.10(a)(i)A | | | | | | | |
| **Other conditions precedent to Site access during the Delivery Phase:** (Clause 2.10(b)(ii)D) | | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | | | | | |
| CLAUSE 3 - PERSONNEL | | | | | | | | | | |
| **Contract Administrator’s representatives and their functions** (Clause 3.4) | | | **Representative** | | | **Function(s)** | | | | |
|  | | |  | | | | |
|  | | |  | | | | |
| **Contractor's key people:** (Clause 3.6(a)) | | | **Person** | | | **Position** | | | | |
| [To be inserted following selection of the successful Tenderer] | | |  | | | | |
|  | | |  | | | | |
|  | | |  | | | | |
|  | | |  | | | | |
| **Meeting and reporting requirements (additional):** (Clause 3.11) | | | IPACE Infrastructure Program Plan dated March 2023 and the documents referred to therein as amended from time to time, available on DEQMS or such other location notified by the Contract Administrator | | | | | | | |
| CLAUSE 4 - SECURITY | | | | | | | | | | |
| **Security to be provided by the Contractor:** (Clause 4.1) | | | Where there are no Stages, for the Works is:  $ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount). | | | | | | | |
| Where there are Stages, for each Stage is: | | | | | | | |
| **Stage** | | | **Amount** | | | | |
|  | | | $ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount). | | | | |
|  | | | $ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount). | | | | |
|  | | | $ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount). | | | | |
|  | | | $ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount). | | | | |
| **Deed of Guarantee, Undertaking and Substitution:**  (Clause 4.4) | | | Clause 4.4 [does/does not] apply. [To be inserted following selection of the successful Tenderer and subject to completion of Financial Viability Assessment] (Clause 4.4 applies unless otherwise stated)  If clause 4.4 applies, the Related Body Corporate of the Contractor is: [To be inserted following selection of the successful Tenderer] | | | | | | | |
| CLAUSE 5 - RISKS AND INSURANCE | | | | | | | | | | |
| **Insurance policies required to be obtained by the Contractor:** (Clause 5.4) | | | ***[INSURANCE LEVELS TO BE FINALISED IN LIGHT OF SUCCESSFUL TENDERER'S NOMINATED LEVELS, THE COMMONWEALTH'S RISK ASSESSMENT AND ANY NEGOTIATIONS WITH THE PREFERRED TENDERER ARISING FROM THAT RISK ASSESSMENT.***  ***WHERE AN INSURANCE IS NOT REQUIRED, OR THE RELEVANT PARTICULAR DOES NOT APPLY, INSERT "Not Applicable". APPROPRIATE ADVICE SHOULD BE SOUGHT WHERE THERE ARE QUESTIONS AS TO WHICH OF THE INSURANCES SPECIFIED BELOW ARE REQUIRED FOR A SPECIFIC PROJECT.]*** | | | | | | | |
| **Public Liability Insurance**  If written on an occurrence basis:  Amount of Cover: $ for each and every occurrence for public liability claims  If written on a claims made basis:  Amount of Cover: $ per claim and $ in the aggregate | | | | | | | |
|  | **Workers Compensation Insurance**  Amount of Cover: The minimum amounts prescribed by statute in each State or Territory or international jurisdiction in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside. | | | | | | | | | |
|  | | | **Employers' Liability Insurance**  Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Contractor's Activities would purchase which must not be less than $ . | | | | | | | |
|  | | | **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | | | | |
|  | | | **Errors and Omissions Insurance**  Amount of Cover: $ per claim and $ in the aggregate. | | | | | | | |
|  | | | **Marine Transit Insurance**  Amount of cover: An amount of not less than the full replacement value of the relevant item of property being transferred, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.  **Construction Risks Insurance**  Amount of Cover:  (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 Commonwealth's consultant fees;  (d) $ for the value of materials or things to be supplied by the Commonwealth; and  (e) % of the total of the amounts in (a) to (d) to cover escalation costs. | | | | | | | |
|  | | | **Other Insurances required on and from the Award Date:** (Clause 5.4(a)(i)E)  **Other Insurances required as a condition precedent to Delivery Phase Approval:** (Clause 5.4(a)(ii)C)  ***[COMMONWEALTH AND CONTRACT ADMINISTRATOR TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED E.G. PRODUCT LIABILITY INSURANCE, MOTOR VEHICLE INSURANCE, INDUSTRIAL SPECIAL RISKS INSURANCE ETC, TRAVEL INSURANCE (SEE BELOW)***  **Travel Insurance** -such insurance to cover all on Site personnel for all work related travel risks, including to provide for medical evacuation. Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Contractor's Activities would purchase.***]*** | | | | | | | |
| **Minimum amount of subcontractors' Professional Indemnity Insurance or Errors and Omissions Insurance:** (Clause 5.4(i)) | | | **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | | | | |
| **Errors and Omissions Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | | | | |
| **Run-off period for Public Liability Insurance (if written on a claims made basis):** (Clause 5.6(b)) | | | 7 years. | | | | | | | |
| **Run-off period for Professional Indemnity Insurance or Errors and Omissions Insurance:** (Clause 5.6(d)) | | | 7 years. | | | | | | | |
| **Maximum aggregate liability of the Contractor to the Commonwealth:**  (Clause 5.11(a)(ii)) | | | In the Planning Phase, the Planning Phase Price.  In the Delivery Phase, the Contract Price | | | | | | | |
| CLAUSE 6 - DESIGN AND DOCUMENTATION | | | | | | | | | | |
| **Number of days for review:** (Clause 6.3(a)(ii) and 6.3(c)) | | days | | | | | | | | |
| **Number of copies of Design Documentation to be submitted by the Contractor to the Contract Administrator:** (Clause 6.5) | |  | | | | | | | | |
| **Design Documentation hard copy requirements:** (Clause 6.5(a)) | | Compatible with Autocad 14 To scale Printed in black ink on white or transparent ISO Standard Sheet (size A1, A3, A4 or as determined by the Contract Administrator) | | | | | | | | |
| **Design Documentation electronic copy requirements:** (Clause 6.5(b)) | | Compatible with Autocad 14 CD-ROM or as determined by the Contract Administrator | | | | | | | | |
| **Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:** (Clause 6.11(a)) | | 1. Formal Agreement  2. Conditions of Contract  3. Special Conditions  4. Contract Particulars  5. In the Delivery Phase, the Works Description  6. Any other documents forming part of the Contract (as specified in the relevant item under clause 1.1 in these Contract Particulars)  7. Design Documentation (which the Contractor is entitled to use under clause 6.3(c))  8. ECI Brief  9. Project Plans | | | | | | | | |
| **Number of days for sample review:** (Clause 6.14(b)(ii) and 6.14(d)) | | days | | | | | | | | |
| CLAUSE 7 - SITE | | | | | | | | | | |
| **Applicability of Latent Condition clauses:** (Clauses 7.3 and 7.4) | | Clauses 7.3 - 7.4 ***[DO/DO NOT]*** apply. (Clauses 7.3 and 7.4 apply unless otherwise stated) | | | | | | | | |
| CLAUSE 8 - CARRYING OUT OF THE CONTRACTOR’S ACTIVITIES | | | | | | | | | | |
| **Existing Approvals and other Approvals which the Commonwealth is to obtain:** (Clause 8.3) | | ***[COMMONWEALTH / CONTRACT ADMINISTRATOR, IN CONSULTATION WITH THE PROJECT'S LEGAL ADVISOR, TO CONSIDER IN THE CONTEXT OF BOTH AUSTRALIAN AND HOST NATION APPROVALS, INCLUDING IN THE CONTEXT OF THE COMMONWEALTH EPBC ACT]*** | | | | | | | | |
| **Statutory Requirements with which the Contractor does not need to comply:** (Clause 8.3(b)(i)) | |  | | | | | | | | |
| **Work which requires approval to subcontract or which must be let to one of the named subcontractors:** (Clause 8.5(a)) | | **Work or Goods** | | | | **Subcontractors** | | | | |
|  | | | |  | | | | |
|  | | | |  | | | | |
| **Stages for which Collateral Warranties required:** (Clause 8.6) | |  | | | | | | | | |
| **Collateral Warranties required to be procured by the Contractor from subcontractors and provided to the Commonwealth:** (Clause 8.6) | | As set out in Annexure 1. | | | | | | | | |
| **Option for responsibility for preparation of design for Provisional Sum Work:** (Clause 8.7) | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved: Clauses 8.7 to 8.12 [do/do not] apply.]  (Clauses 8.7 to 8.12 do not apply unless otherwise stated) | | | | | | | | |
| **Option for responsibility for preparation of design for Provisional Sum Work:** (Clause 8.8) | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved: [Option 1/Option 2] applies.]  (Option 1 applies unless otherwise stated) | | | | | | | | |
| **Contractor to invite tenders for Provisional Sum Work from the following tenderers:** (Clause 8.9(a)(i)) | | **Work** | | | | **Tenderers** | | | | |
| [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | |  | | | | |
| **Form of subcontract approved for Provisional Sum Work:** (Clause 8.9(a)(ii)) | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | | | | | | |
| **Percentage excess entitling additional profit and attendance:** (Clause 8.12) | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved]  (20% unless otherwise stated) | | | | | | | | |
| **Percentage for additional profit and attendance for Provisional Sum Work exceeding provisional sum allowance by stated percentage:** (Clause 8.12) | | [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved] | | | | | | | | |
| **Stages for which a certificate signed by a licensed surveyor is required as condition precedent to Completion:** (Clause 8.15) | |  | | | | | | | | |
| **Access hours for Contractor's Activities on Site:** (Clause 8.24) | |  | | | | | | | | |
| **Requirements for Contract Administrator's Office:** (Clause 8.26) | |  | | | | | | | | |
| **Number of project signboards:** (Clause 8.27(a)) | |  | | | | | | | | |
| **Project signboard dimensions:** (Clause 8.27(a)(i)) | |  | | | | | | | | |
| **Project signboard information (additional):** (Clause 8.27(a)(ii)H) | |  | | | | | | | | |
| CLAUSE 9 – QUALITY | | | | | | | | | | |
| **Number of days for submission of Project Plans:** (Clause 9.2(a)(ii)A) | | Environmental Management Plan: | | | | | | days | | |
| Fraud and Corruption Control Plan: | | | | | | days | | |
| Local Industry Capability Plan: | | | | | | days | | |
| Pandemic Management Plan: | | | | | | days | | |
| Project Lifecycle and HOTO Plan: | | | | | | days | | |
| Site Management Plan: | | | | | | days | | |
| Work Health and Safety Plan: | | | | | | days | | |
| Other: ***[SPECIFY]*** | | | | | | days | | |
| **Number of days for review of Project Plans:** (Clause 9.2(a)(ii)B) | | Environmental Management Plan: | | | | | | days | | |
| Fraud and Corruption Control Plan: | | | | | | days | | |
| Local Industry Capability Plan: | | | | | | days | | |
| Pandemic Management Plan: | | | | | | days | | |
| Project Lifecycle and HOTO Plan: | | | | | | days | | |
| Site Management Plan: | | | | | | days | | |
| Work Health and Safety Plan: | | | | | | days | | |
| Other: ***[SPECIFY]*** | | | | | | days | | |
| **Period by which Defects Liability Period will be extended following rectification of a Defect or Completion of a Variation to overcome a Defect:** (Clause 9.11) | |  | | | | | | | | |
| **Defects Records and Reports (additional):** (Clause 9.15(b)(vi)) | |  | | | | | | | | |
| CLAUSE 10 - TIME | | | | | | | | | | |
| **Maximum intervals between program updates by Contractor:** (Clause 10.2(a)(i)) | |  | | | | | | | | |
| **Program methodology and format:** (Clause 10.2(a)(iv)) | | Prepared as a computerised "Critical Path Method" network precedence diagram, and compatible with Microsoft Project (or equivalent format approved by the Contract Administrator) | | | | | | | | |
| **Additional causes of delay entitling Contractor to claim an extension of time in the Delivery Phase:** (Clause 10.5(b)(i)) | | 1. A change or variance in respect of a Statutory Requirement after the Award Date.  2. A Commonwealth Risk.  3. If clauses 7.3 and 7.4 apply, a Latent Condition.  4. Valuable, archaeological or special interest items found on or in the Site.  5. If clause 1 of the Special Conditions applies, Latent Hazardous Substances, Asbestos, ACM or GHS Material.  6. A Pandemic Adjustment Event.  7. A Force Majeure Event.  8. ***[COMMONWEALTH AND CONTRACT ADMINISTRATOR TO CONSIDER AND INSERT ANY PROJECT-SPECIFIC CAUSES OF DELAY ENTITLING THE CONTRACTOR TO CLAIM AN EXTENSION OF TIME]*** | | | | | | | | |
| **Delay damages:** (Clause 10.10) | | Clause 10.10 ***[DOES/DOES NOT]*** apply. (Clause 10.10 applies unless otherwise stated)  If clause 10.10 applies:  Where there are no Stages, the daily cap on the extra costs reasonably incurred for the Works is:  [Amount and currency to be inserted following selection of successful Tenderer] per working day | | | | | | | | |
| If there are Stages, the daily cap on the extra costs reasonably incurred for each Stage is: | | | | | | | | |
| **Stage** | | | | **Maximum delay damages** | | | | |
|  | | | | [Amount and currency to be inserted following selection of successful Tenderer] per working day | | | | |
|  | | | | [Amount and currency to be inserted following selection of successful Tenderer] per working day | | | | |
|  | | | | [Amount and currency to be inserted following selection of successful Tenderer] per working day | | | | |
|  | | | | [Amount and currency to be inserted following selection of successful Tenderer] per working day | | | | |
| **Additional events entitling the Contractor to claim delay damages:**  (Clause 10.10(b)(ii)) | |  | | | | | | | | |
| **Percentage of extra costs reasonably incurred due to acceleration:** (Clause 10.14(b)(ii)) | | [To be inserted following selection of the successful Tenderer] % (5% unless otherwise stated) | | | | | | | | |
| **Force Majeure:**  (Clause 10.16) | | Clause 10.16 ***[DOES/DOES NOT]*** apply. (Clause 10.16 does not apply unless otherwise stated) | | | | | | | | |
| CLAUSE 11 - VARIATIONS | | | | | | | | | | |
| **Percentage adjustments for valuing a Variation to the Works in the Delivery Phase:** (Clauses 11.3(b)(i), 11.3(c)(iii) and 11.6(f)) | | [To be inserted following selection of the successful Tenderer]% of amount determined for off-site overheads and profit  [To be inserted following selection of the successful Tenderer]% of amount determined for non-time related on-site overheads and preliminaries | | | | | | | | |
| **Percentage of wages:** (Clause 11.6(b)) | | [To be inserted following selection of the successful Tenderer]% | | | | | | | | |
| CLAUSE 12 – PAYMENT | | | | | | | | | | |
| **Times for submission of payment claims by the Contractor to the Contract Administrator:** (Clause 12.2(a)) | | Monthly on the day of each month in accordance with the Fee Payment Schedule | | | | | | | | |
| **Number of business days for payment:** (Clause 12.5) | | | 10 | | | | | | | |
| **Maximum cumulative amount for long lead time and specialised items:** (Clause 12.8(a)) | | |  | | | | | | | |
| **Percentage amount for additional Approved Security:** (Clause 12.9(a)(ii)A) | | | (100% of the amount claimed for the unfixed goods and materials, unless otherwise stated) | | | | | | | |
| **Interest rate:** (Clause 12.15) | | | In the case of damages or late payments, the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contract Administrator | | | | | | | |
| **Taxes for which the Commonwealth bears the risk:**  (Clause 12.19) | | |  | | | | | | | |
| CLAUSE 13 - COMPLETION | | | | | | | | | | |
| **Liquidated damages payable by Contractor when Date of Completion occurs after Date for Completion:** (Clause 13.7) | | | If there are no Stages, for the Works is: | | | | | | | |
| $ per day | | | | | | | |
| If there are Stages, for each Stage is: | | | | | | | |
| **Stage** | | | | **Liquidated Damages** | | | |
|  | | | | $ per day | | | |
|  | | | | $ per day | | | |
| CLAUSE 14 - TERMINATION | | | | | | | | | | |
| **Number of days to remedy breach:** (Clauses 14.3(c) and 14.4(b)) | | | days | | | | | | | |
| CLAUSE 15 - DISPUTES | | | | | | | | | | |
| **Directions to be subject of an expert determination if disputed:** (Clause 15.2) | | | Directions under clauses: 4.2, 7.3(b)(i), 7.4(a)(ii), 8.4(c)(ii), 8.4(d), 8.22(d)(ii), 8.30, 9.5, 9.9(b)(i), 9.10, 10.8, 10.11(b)(ii), 11.3(b), 11.3(c)(ii), 11.3(d), 11.6, 12.4, 13.2(b)(ii) and 14.8(a) and if clause 1 of the Special Conditions applies, clause 1.1(b)(i) of the Special Conditions and clause 1.2(b) of the Special Conditions. | | | | | | | |
| **Industry expert who will conduct expert determinations:** (Clause 15.3(a)(i)) | | |  | | | | | | | |
| **Nominating authority for industry expert:** (Clause 15.3(a)(ii)) | | | (The President for the time being of the Resolution Institute unless otherwise specified) | | | | | | | |
| CLAUSE 16 - NOTICES | | | | | | | | | | |
| **Address and email address, for the giving or serving of notices, upon:** (Clause 16.7(b)(i)) | **Commonwealth:**  Address (not PO Box):  Email address:  Attention: | | | | | | | | | |
| **Contract Administrator:**  Address (not PO Box):  Email address:  Attention: | | | | | | | | | |
| **Contractor:**  Address (not PO Box): [To be inserted following selection of the successful Tenderer]  Email address: [To be inserted following selection of the successful Tenderer]  Attention: [To be inserted following selection of the successful Tenderer] | | | | | | | | | |
| CLAUSE 18 - GENERAL |  | | | | | | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 18.6) | Clause 18.6 ***[DOES/DOES NOT]*** apply. (Clause 18.6 does apply unless otherwise stated) | | | | | | | | | |
| **CLAUSE 20 - COMMERCIAL-IN-CONFIDENCE INFORMATION** | | | | | | | | | | |
| **Commercial-in-Confidence Information:** (Clause 20.2) | Clause 20.2 [does/does not] apply. [To be inserted following selection of the successful Tenderer] (Clause 20.2 does not apply unless otherwise stated) | | | | | | | | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 20.2) | **Specific Information** | | | | | **Justification** | | | **Period of confidentiality** | |
| [To be inserted following selection of the successful Tenderer] | | | | | [To be inserted following selection of the successful Tenderer] | | | [To be inserted following selection of the successful Tenderer] | |
| **CLAUSE 22 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION** | | | | | | | | | | |
| **Sensitive and Classified Information:** (Clause 22) | Clause 22 ***[DOES/DOES NOT]*** apply. (Clause 22 does not apply unless otherwise stated) | | | | | | | | | |
| **Current security clearance level/s:** (Clause 22.2(b), 22.3(d)(i)) |  | | | | | | | | | |
| **Information technology environment accreditation or certification level/s:** (Clause 22.3(g)(i)D) | ***[THIS TEMPLATE DOES NOT REQUIRE THE CONTRACTOR TO HOLD DISP ACCREDITATION. IF THERE ARE PROJECT-SPECIFIC REASONS TO REQUIRE THE CONTRACTOR OR A PARTICULAR SUBCONTRACTOR TO HOLD DISP ACCREDITATION, COMMONWEALTH / CONTRACT ADMINISTRATOR, IN CONSULTATION WITH THE PROJECT'S LEGAL ADVISOR, TO CONSIDER A SPECIAL CONDITION FOR THIS PURPOSE]*** | | | | | | | | | |
| ANNEXURE 1 - WORKS INFORMATION | | | | | | | | | | |
| **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)) |  | | | | | | | | | |

ATTACHMENT 1 TO THE CONTRACT PARTICULARS - ECI BRIEF

ATTACHMENT 2 TO THE CONTRACT PARTICULARS - fee payment schedule

[To be inserted following selection of the successful Tenderer]

1. - WORKS INFORMATION
2. "As-Constructed" Drawings and Documents

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Stage:

* + 1. provide to the Contract Administrator the number of complete sets of the draft 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 draft "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 draft 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 1.1 and clause 8.6 of the Conditions of Contract the Contractor must, as a condition precedent to Completion of the Works or a Stage, provide the Contract Administrator with the following minimum warranties (in the form of the Collateral Warranty) for the following warranty periods:

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

1. Operation and Maintenance Manuals

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Stage:

* + 1. compile specific operation and maintenance manuals for each aspect of the Works or the Stage including obtaining and coordinating information provided by the Contractor and its subcontractors;
    2. prior to the commencement of commissioning of the Works or the Stage, provide one copy of draft operation and maintenance manuals in respect of each aspect of the Works or the Stage (**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 Stage, provide one copy of all operation and maintenance manuals in respect of the Works or the Stage 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**) specified in the Contract Particulars to the Contract Administrator.

For the purposes of this clause 3:

* + 1. catalogues, sales brochures and other documents giving general information in respect of aspects of the Works or the Stage will not be acceptable;
    2. all manuals must be sufficiently comprehensive for routine maintenance, overhaul and repairs to be carried out by personnel who are qualified to undertake maintenance work but who are not necessarily familiar with any particular aspect of the Works or the Stage; and
    3. all manuals must be prepared in accordance with the "Operations & Maintenance Manual Checklist" available on DEQMS or such other location notified by the Contract Administrator, as amended from time to time, 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. a comprehensive asset management plan which describes in detail a proposed approach to maintenance for the five year period commencing on the Date of Completion;
       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 1.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Stage:

* + 1. during commissioning of the Works or the Stage, plan, manage and deliver a comprehensive training program in respect of all operational and maintenance aspects of the Works or the Stage 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 Stage; 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.

1. - SPECIAL CONDITIONS

***[DEFENCE AND THE TENDER/CONTRACT ADMINISTRATOR ARE TO REVIEW THIS LIST OF POTENTIAL SPECIAL CONDITIONS AND ADVISE WHICH ONES ARE REQUIRED FOR THE CONTRACT. DEFENCE AND THE TENDER/CONTRACT ADMINISTRATOR ARE ALSO REQUIRED TO IDENTIFY ANY AMENDMENTS TO THESE SPECIAL CONDITIONS OR ANY ADDITIONAL SPECIAL CONDITIONS WHICH MAY BE REQUIRED AND ADVISE THESE TO THE PROJECT'S LEGAL SERVICES PROVIDER (IF ANY)]***

1. LATENT HAZARDOUS SUBSTANCE, ASBESTOS, ACM OR GHS MATERIAL
   1. Notice of Latent Hazardous Substances, Asbestos, ACM or GHS Material
      1. If in carrying out the Contractor's Activities the Contractor considers that it has encountered or found Latent Hazardous Substances, Asbestos, ACM or GHS Material, it must:
         1. immediately give the Contract Administrator and the Commonwealth notice in writing;
         2. not disturb the substance or the material under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and
         3. ensure that all persons are protected from exposure to the substance or material (including in accordance with the WHS Legislation, as if the WHS Legislation applied to the Contractor) until the nature of the substance or material has been competently determined.
      2. The Contract Administrator must within 14 days of receipt of the Contractor's notice under paragraph (a)(i):
         1. notify the Contractor and the Commonwealth of its determination of whether Latent Hazardous Substances, Asbestos, ACM or GHS Material 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 Hazardous Substances, Asbestos, ACM or GHS Material.
   2. Contractor's Entitlement

If, in the Delivery Phase, the Contract Administrator determines that Latent Hazardous Substances, Asbestos, ACM or GHS Material have been encountered or found, 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 10.7 of the Conditions of Contract; and
    2. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under clause 1.1(a) which arise directly from the Latent Hazardous Substances, Asbestos, ACM or GHS Material and the Contract Administrator's instruction under clause 1.1(b)(ii), as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any Latent Hazardous Substances, Asbestos, ACM or GHS Material or the Contract Administrator's instruction under clause 1.1(b)(ii), other than under paragraphs (a) and (b).

* 1. Contractor's Obligations

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, if:

* + 1. the Contractor's Activities include identifying, surveying, treating, removing, monitoring or doing any other matter or thing in respect of Hazardous Substances, Asbestos, ACM or GHS Material; or
    2. the Contract Administrator has otherwise instructed the Contractor under clause 1.1(b)(ii) to identify, survey, treat, remove, monitor or do any other matter or thing in respect of Hazardous Substances, Asbestos, ACM or GHS Material,

the Contractor must comply with the requirements of the WHS Legislation, any applicable Code of Practice and any other Statutory Requirements applicable in the location in which the Works are situated relating to such substances and materials.

* 1. Definitions and interpretation
     1. If clause 7.3 and 7.4 of the Conditions of Contract apply, this clause 1 takes precedence over clauses 7.3 and 7.4 of the Conditions of Contract.
     2. For the purposes of clause 1:
        1. **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
        2. **Dangerous Goods** has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
        3. **GHS** means the Globally Harmonised System of Classification and Labelling of Chemicals published by the United Nations, as amended from time to time and as modified by the relevant WHS Legislation.
        4. **GHS Material** means material suspected of containing or likely to contain a substance defined or listed in the GHS.
        5. **Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth) and includes:
           1. prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
           2. restricted carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
           3. hazardous chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls;
           4. Schedule 11 Hazardous Chemicals;
           5. hazardous chemicals listed in Table 14.1 of Schedule 14 of the *Work Health and Safety Regulations 2011* (Cth);
           6. Schedule 15 Chemicals; and
           7. lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        6. **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
        7. **Latent Hazardous Substances, Asbestos, ACM** **or** **GHS Material** means Hazardous Substances, Asbestos, ACM or GHS Material in, on or in the vicinity of the Site which differ materially from the Hazardous Substances, Asbestos, ACM or GHS Material which should have been anticipated by a prudent, competent and experienced contractor if it had done the things that the Contractor is:
           1. deemed to have done under clause 7.1 of the Conditions of Contract; or
           2. required to do by the Contract.
        8. **Ozone Depleting Substance** means any substance identified as having ozone depleting potential in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act.
        9. **Schedule 11 Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        10. **Schedule 15 Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        11. **Synthetic Greenhouse Gas** means any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or in any regulations made under that Act.

1. USE OF HAZARDOUS SUBSTANCES (INCLUDING HAZARDOUS CHEMICALS)
   1. The Contractor
      1. The Contractor acknowledges and agrees that there may be Hazardous Substances present at the Site.
      2. The Contractor must provide full details of each Hazardous Substance (including the proposed location and protective covering) proposed to be used in the Contractor's Activities or incorporated into the Works to the Contract Administrator as soon as possible after the Award Date (and in any event no later than 30 days prior to the proposed Hazardous Substance being used in the Contractor's Activities or incorporated into the Works).
      3. Without limiting clause 8.17 of the Conditions of Contract or any other provision of the Contract, the Contractor must:
         1. ensure its Work Health and Safety Plan provides for the management of work involving Hazardous Substances;
         2. implement a work health and safety management system which complies with all Statutory Requirements concerning Hazardous Substances;
         3. comply with any applicable Code of Practice (as if it applied to the Contractor);
         4. ensure that all documentation (including all Design Documentation and other Project Documents) concerning Hazardous Substances (including in relation to assembly, maintenance and operation) is endorsed to identify the nature of the hazard and risk arising from the Hazardous Substance (including those risks which may remain after Completion and after the end of the last Defects Liability Period);
         5. ensure that all goods for incorporation in the Works comply with WHS Legislation and any Statutory Requirements relating to Hazardous Substances, as if they applied to the Contractor. The goods must not emit fumes, liquids, solids, electromagnetic radiation, heat or noise which could be detrimental to persons, the Environment or the operation of other equipment, except to the extent that this is consistent with the end-use and nature of the goods and has been notified to the Contract Administrator in writing;
         6. ensure that all Hazardous Substances used in connection with the Contractor's Activities or incorporated into the Works are correctly labelled and/or packaged (including to clearly identify the nature of the substance and its associated hazards), in accordance with WHS Legislation and Statutory Requirements, as if they applied to the Contractor;
         7. notify the Contract Administrator within 14 days of becoming aware of any non-hazardous substance which could be substituted for the Hazardous Substance without significant detriment to the performance of the Contractor's Activities or the Works; and
         8. be able to demonstrate compliance with this paragraph (c) at the request of the Contract Administrator.
      4. Without limiting clause 8.17 of the Conditions of Contract, the Contractor is responsible for all Hazardous Substances used or incorporated into the Works by subcontractors.
   2. Definitions

For the purposes of clause 2:

* + 1. **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
    2. **Dangerous Goods** has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
    3. **Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* 2011(Cth) and includes:
       1. prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
       2. restricted carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
       3. hazardous chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls;
       4. Schedule 11 Hazardous Chemicals;
       5. hazardous chemicals listed in Table 14.1 of Schedule 14 of the *Work Health and Safety Regulations 2011* (Cth);
       6. Schedule 15 Chemical; and
       7. lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    4. **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
    5. **Ozone Depleting Substance** means any substance identified as having ozone depleting potential in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act.
    6. **Schedule 11 Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    7. **Schedule 15 Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    8. **Synthetic Greenhouse Gas** means any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or in any regulations made under that Act.

1. UNEXPLODED ORDNANCE (UXO)
   1. Notice of UXO
      1. If the Contractor in the course of carrying out the Contractor's Activities considers it has encountered or found UXO, it must: 
         1. immediately give the [Contract Administrator](#ContractAdministrator) and the [[Commonwealth](#Commonwealth)](#Commonwealth) notice in writing;
         2. not touch or disturb the item under any circumstances;
         3. clearly mark and protect the location of the item;
         4. ensure all persons and Plant, Equipment and Work are kept clear of the item;
         5. ensure all persons and Plant, Equipment and Work are protected from exposure to the item;
         6. comply with all instructions of the [Contract Administrator](#ContractAdministrator) and the [[Commonwealth](#Commonwealth)](#Commonwealth) in relation to the item; and
         7. comply with clause 8.17 of the Conditions of Contract.
      2. The Contract Administrator must, within 14 days of the receipt of the Contractor's notice under paragraph (a)(i): 
         1. notify the Contractor and the Commonwealth of its determination of whether UXO 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 UXO.
   2. Contractor's Entitlement
      1. If the Contract Administrator determines that UXO has been encountered or found following receipt of a notice from the Contractor under clause 3.1 in the Delivery Phase and the Contractor has complied with clause 3.1(a) 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 10.7 of the Conditions of Contract; and
         2. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after either the giving of the notice under clause 3.1(a) which arise directly from the UXO and the Contract Administrator's instruction under clause 3.1(b)(ii), as determined by the Contract Administrator.
      2. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any UXO, the Contract Administrator's instruction under clause 3.1(b)(ii), other than under paragraph (a).
   3. Definitions and interpretation

For the purposes of this clause 3, **UXO** means any sort of military ammunition or explosive on or under the Site which has failed to explode including, sea mines or shells used by a navy, mortar bombs, mines, artillery shells or hand grenades used by the army, bombs, rockets or missiles used by an air force, and other types of ammunition and explosives including training munitions and any explosive remnants of war.

1. DRAWINGS

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, all drawings which the Contractor is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

* + 1. the standard prescribed in the Contract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Works);
    2. all Statutory Requirements;
    3. the directions of the Contract Administrator; and
    4. to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.

1. DILAPIDATION SURVEY
   * 1. Prior to commencing the Contractor's Activities on the Site, the Contractor must carry out a comprehensive survey of the location and condition of existing structures, roads, carparks, access paths, footpaths, trees, services, ***[and]*** other civil works ***[and INSERT ANY OTHER AREAS/FEATURES TO BE INCLUDED IN THE SURVEY]*** on and around the Site. The survey must include the recording by all adequate means as is necessary to accurately show the existing conditions. If requested by the Contractor, the Contract Administrator may attend for the carrying out of the survey.
     2. The survey must include a comprehensive photographic record of existing conditions prior to the Contractor having access to the Site.
     3. A copy of the survey and the photographic record is to be provided to the Contract Administrator by no later than ***[INSERT]*** days after the Commonwealth gives the Contractor access to the Site.
2. PRIOR WORK
   * 1. Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality, completeness, accuracy or adequacy of any work to be carried out or that has been carried out by any other person (**Prior Work**), the Contractor must:
        1. inspect the Prior Work as soon as is practicable after the Commonwealth gives the Contractor access to the Site under clause 2.8(a) or 2.10(b)(ii)of the Conditions of Contract (as the case may be);
        2. if it discovers any defect or matter in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify the Contract Administrator in writing providing:
           1. full particulars of the defect or matter identified; and
           2. the reasons for the opinion formed by it in respect to the defect or matter identified; and
        3. not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in subparagraph (ii).
     2. On receipt of the Contractor's notice, the Contract Administrator will investigate the Prior Work the subject of the notice and:
        1. if the Contract Administrator agrees with the Contractor - issue a direction to the Contractor and value any work carried out by the Contractor by reason of that direction as a Variation under clause 11.3 of the Conditions of Contract; or
        2. if the Contract Administrator disagrees with the Contractor - issue an instruction to the Contractor to commence or continue with the Contractor's Activities.
     3. If the Contractor fails to:
        1. inspect the Prior Work as required by clause 6(a)(i); or
        2. notify the Contract Administrator of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Contractor's Activities,

and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Contractor's Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non-detrimental for the proper execution of the Contractor's Activities will be performed by the Contractor at its own expense.

1. JOINING UP

Where the method of joining up of old and new work is not specified in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract, the cutting away and joining up must be carried out by the Contractor in a manner approved by the Contract Administrator and made good in all trades to match existing adjacent work.

1. EXISTING SERVICES AND STRUCTURES
   * 1. The Contractor may only modify or remove existing structures or services within the Site in accordance with the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract.
     2. The Contractor must obtain the prior written approval from the Contract Administrator in relation to the timing of any connection, disconnection or interference with existing structures and services.
     3. Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Contractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract or should have been shown in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract, is evident on the Site or has been notified in writing by the Contract Administrator to the Contractor, the Contractor is responsible for the cost of any necessary repair or relocation in the event of damage.
     4. The Contractor must notify the Contract Administrator immediately upon the discovery of services or obstructions not shown in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract or identified by inspection.
     5. The Contractor must immediately notify the Contract Administrator in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
     6. The Contractor must, with every care and skill, support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the execution of the Works and must comply with the requirements of the Commonwealth, of relevant authorities and others controlling those structures, fences, services, landscaping and property for their protection from damage during construction or maintenance of the Works.
2. ITEMS TO BE SUPPLIED BY THE COMMONWEALTH

The items specified in the Schedule to clause 9 will be supplied by the Commonwealth without charge to the Contractor for use in the execution of the Contractor's Activities subject to the following conditions:

* + 1. the Contractor must submit a written request for any such items and, on receiving the Contract Administrator's written authority, must take delivery of the items at ***[INSERT TIME AND PLACE]***;
    2. before taking delivery of any such items, the Contractor must ensure that they are in a satisfactory condition and in the quantities specified and the Contractor has all relevant information in respect of the installation, construction or commissioning of such items;
    3. to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the replacement of any items that the Contractor claims to be defective or deficient in quantity;
    4. the Contractor is responsible for the safety of all such items until they are incorporated in the Works; and
    5. the Commonwealth does not represent or warrant that the quantities specified in clause 9 are adequate for the Contractor's Activities and the supply of any additional quantities must be arranged by the Contractor at its cost.

Schedule of Items

Item Quantity

[INSERT] [INSERT]

1. METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES
   * 1. Without limiting clause 9.2 of the Conditions of Contract, the Contractor must prepare and implement by no later than ***[INSERT E.G. 14 days]*** after the Award Date and as a condition precedent to the Contractor being given access to the Site, a Method of Work Plan for Airfield Activities for all aspects of the Contractor's Activities and the Works (**Method of Work Plan for Airfield Activities**).
     2. The Method of Work Plan for Airfield Activities must incorporate Site specific management and control procedures and 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. submission of the Method of Work Plan for Airfield Activities to the Contract Administrator;
        2. the establishment of the Site;
        3. access to the Site;
        4. security passes for the Site;
        5. personnel and vehicle identification and control on the Site;
        6. control of personnel including a point of contact from the Contractor;
        7. liaison with the Commonwealth and Other Contractors;
        8. Approvals prior to carrying out Works;
        9. rubbish, dust and debris control;
        10. Foreign Object Damage (**FOD**) control;
        11. noise management;
        12. fencing;
        13. security of the Works;
        14. hours of work;
        15. traffic management;
        16. safety procedures;
        17. fuel and hazardous material storage;
        18. issues associated with military exercises and military expeditions; and
        19. issues associated with aircraft movements.
2. OPERATING AIRFIELD
   * 1. The Contractor must ensure that the Contractor's Activities and the Works do not compromise aircraft operations or the safety of aircraft.
     2. Without limiting clause 8.17(a)(ii)of the Conditions of Contract and as part of the Contractor's Activities, the Contractor must liaise with the Commonwealth and the Contract Administrator as required to co-ordinate the Contractor's Activities and the Works with, and prevent interruption of, Commonwealth activities including aircraft operations and the safety of aircraft.
3. PRELIMINARY DESIGN SOLUTION

Without limiting the Contractor's obligations elsewhere in the Contract, the Contractor acknowledges and agrees that:

* + 1. prior to the Award Date, [***IT HAS/THE COMMONWEALTH’S CONSULTANTS HAVE***] prepared the Preliminary Design Solution;
    2. it bears all risks howsoever they may arise as a result of the use by it of the Preliminary Design Solution;
    3. the use of the Preliminary Design Solution by the Contractor does not affect any of its warranties or other obligations under the Contract or entitle it to make any Claim against the Commonwealth, arising out of, or in any way in connection with, such use;
    4. if the Works are designed and constructed in accordance with the Preliminary Design Solution (as may be developed in accordance with the Contract), the Works will comply with the requirements of the Works Description and satisfy all other requirements of the Contract; and
    5. it must design and construct the Works in accordance with the Preliminary Design Solution (as may be developed in accordance with the Contract), except to the extent where a Variation necessitates a consequential change to the Preliminary Design Solution in which case the Contractor must notify the Contract Administrator of such change.

1. WORK HEALTH AND SAFETY - ENGAGEMENT AS PRINCIPAL CONTRACTOR

In accordance with Regulation 293 of the WHS Legislation, the Commonwealth 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 WHS Legislation. 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 by notice in writing given by the Commonwealth or the Contract Administrator.

For the purposes of the Contract, the project and the WHS Legislation, **principal contractor** means the role as authorised and engaged under this clause 13.

1. FACILITIES AND INFRASTRUCTURE ACCOUNTING

Without limiting clause 12.2 of the Conditions of Contract, for the purposes of assisting the Commonwealth to bring all completed facilities and infrastructure to account, as a condition precedent to Completion, the Contractor must provide a cost report to the Contract Administrator which sets out:

* + 1. details of the Contract Price and all other amounts payable under the Contract paid by the Commonwealth to the Contractor in respect of the Works or the Stage;
    2. ***[INSERT ANY ADDITIONAL MATTERS]***; and
    3. any other matters required by the Contract Administrator.

1. DOCUMENT AND CONSTRUCT - NOVATION OF DESIGN CONSULTANT

***[THIS CLAUSE IS ONLY TO BE USED WITH PRIOR APPROVAL FROM IPACE IN CIRCUMSTANCES WHERE THE DESIGN CONSULTANT WILL BE NOVATED TO THE CONTRACTOR IN THE DELIVERY PHASE]***

* 1. Novation of Design Consultant

The Contractor agrees that, on ***[INSERT*** ***DATE / PERIOD OF TIME FOLLOWING THE DATE OF DELIVERY PHASE APPROVAL]*** in the Delivery Phase, it will accept a novation of the Design Services Contract between the Commonwealth and the Design Consultant by:

* + 1. executing a consultant deed of novation in the form set out in the Schedule of Collateral Documents (**Consultant Deed of Novation**) completed with all relevant particulars;
    2. delivering that deed to the Commonwealth; and
    3. thereafter, subject to clause 6.2(a) of the Conditions of Contract and to the extent not completed in the Planning Phase, having the Design Consultant complete the design of the Works.
  1. Fitness for Purpose

Clause 6.6(b) of the Conditions of Contract is deleted and replaced as follows:

(b) upon Completion, the Works or the Stage will, to the extent that:

* + - 1. the Works have or the Stage has been designed by the Contractor; or
      2. the Contractor is otherwise responsible for the design of the Works or the Stage under clause 15.3 of the Special Conditions,

be fit for the purposes as set out in, or reasonably to be inferred from, the Works Description.

* 1. Warranties Unaffected

The Contractor:

* + 1. acknowledges that prior to the Award Date certain activities may have been, and during the Planning Phase certain work will be performed in respect of the design of the Works by the Design Consultant;
    2. warrants that it has checked and carefully considered the design work referred to in paragraph (a) and that the design work is proper, adequate and suitable for the purposes for which the Works are intended; and
    3. agrees that:
       1. the warranties given in the Contract will remain unaffected;
       2. it will comply with its obligations to complete the Works as required by the Contract;
       3. it will bear and continue to bear full liability and responsibility for the design and construction of the Works in accordance with the Contract (including the risk of any Defects which may arise (whether directly or indirectly) as a result of or in any way in connection with any design prepared, or other work performed, whether before, on or after the Date of Delivery Phase Approval by the Design Consultant), and that this will not affect its obligations to complete the Works in accordance with the Contract or thereafter its obligations during the Defects Liability Period; and
       4. it will not be entitled to make (nor will the Commonwealth be liable upon) any Claim against the Commonwealth, arising out of, or in any way in connection with, the use by the Contractor of the Planning Phase Design Documentation,

notwithstanding paragraph (a) and that it is required to:

* + - 1. adopt the design which was prepared by the Design Consultant; and
      2. accept a novation of the Design Services Contract under clause 15.1.

1. - methodology statement

[To be inserted following selection of the successful Tenderer]

1. - Outline Cost Plan

[To be inserted following selection of the successful Tenderer]